The Solicitors' Journal

(ESTABLISHED 1857.)

NOTICE TO SUBSCRIBERS.—The Index to Vol. 73 (Part II), accompanied our issue of the 25th January last and should be returned with the numbers for binding (see advertisement on page ii). The prepaid Annual Subscription to Vol. 74 (£2 12s.) became due on 1st January.

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Current Topics.

The Cause Lists.

THOUGH THE published numbers of cases and matters for trial in the present as compared with previous terms are as delusive as most statistics, yet qualitatively, rather than quantitatively, considered, much interesting information may be gathered from the cause-lists. One effect of the "de-rating" scheme is to be seen in the Crown Paper, in which rating appeals constitute one-third of the total. An Act of Parliament which has produced the opposite result has been the Money-lenders' Act of three years ago, for the claims by well-known litigants of this type on "bills" and "notes" which used to crowd the non-jury list have now disappeared. On the other hand, there are a large number of actions concerned with the trade in, and particularly the hire-purchase of, motor-cars. But the motor has slain its tens of thousands to the hundreds it has swindled, and the common jury list contains a larger proportion than ever of claims for "personal injuries" and "Lord Campbell's Act." The number of actions brought upon "contracts" and so forth might lead to the conclusion that trade is improving, were it not that in many cases the names of the parties show that these are actions arising out of the recent financial crashes. The Court of Appeal has a very short list, as will continue to be the case, not only so long as the cost of litigation remains high, but while so large a proportion of cases depend on questions of fact. It is obviously seldom possible to appeal in a "running-down" action; and for this reason the Civil Paper also is not very full. The fewness of Workmen's Compensation appeals is generally attributed to the high wages obtainable as opposed to the limited compensation, whereas the Revenue Paper will remain full so long as taxation is so high as not to be paid when there is any chance of disputing it.

Appeals to the Privy Council.

WE HAVE heard so much of late of the alleged desire on the part of certain of the Dominions to curtail and even to abolish altogether the right of appeal to the Judicial Committee of the Privy Council, that it is interesting and refreshing to find so distinguished a jurist as Sir MICHAEL MYERS, the Chief Justice of New Zealand, stating that there is certainly no desire on the part of that Dominion to sever its judicial connexion with the Council Chamber in Downing-street where appeals are heard and disposed of. Sir MICHAEL went further and declared that the Privy Council is the finest tribunal in the world, as it certainly exercises the widest jurisdiction and expounds a greater diversity of laws than any other. Yet it can scarcely be said to be housed in a manner corresponding to its importance. There is a lack of dignity in its surroundings eminently characteristic of English ways. Some day, perhaps, the dream indulged by WALTER BAGEHOT half a century ago, and later by the late LORD HALDANE, of a great Imperial Court of Appeal taking the place of the House of Lords and the Judicial Committee of the Privy Council, may be realized, and it may be that when prosperity returns to England, which now, as "the weary Titan," groans under its crushing load of taxation, money may be found for providing a building worthy of a great nation and worthy of the capital city and seat of the greatest Empire the world has yet seen. Meanwhile the Judicial Committee pursues its task with assiduity and discharges its duties to the satisfaction of suitors regardless of the fact that it is denied a worthy habitation.

The Ecclesiastical Commissioners.

THE eighty-second annual report of the Ecclesiastical Commissioners for the year 1929 contains a variety of interesting and useful information. It is somewhat intriguing (to use a modern expression) to read in the report of the Comptroller and Auditor-General with which the financial statement ends, that:—

> "Bonus on Civil Service scale has been paid to two Church Estates Commissioners in addition to the maximum salary authorised by s. 2 of the Act 13 and 14 Vict., c. 94."

That of course is for the information of Parliament to whom the report is presented by the Home Secretary by His Majesty's command. We have had the curiosity to look back and see whether this is an innovation and find that it appears in the annual reports for some years past. Nobody seems to have questioned this payment or to have raised the interesting technical question of the right of the Ecclesiastical Commissioners thus to dispose of funds beyond the statutory authorisation, seeing that the Church Estates Commissioners are not civil servants but are remunerated out of the common fund of the property of the Church. In the same connexion it is interesting to observe that a Measure has just been passed by the Church Assembly providing for the pensioning off of Church Estates Commissioners who have served for fifteen years on such scale as the Ecclesiastical Commissioners in their own uncontrolled discretion may determine. We wonder whether the members of the Church Assembly when they passed this "blank cheque" Pensions Measure had

before them the comments of the Auditor-General! Seeing that the Ecclesiastical Commissioners are not responsible to the Church Assembly the passing of this Measure suggests a further interesting constitutional question. Has not the time arrived when the Ecclesiastical Commissioners should become directly responsible to the Church Assembly in respect of all Church property?

'Twixt the Cup and the Slip.

In an action in the Shoreditch County Court recently, a woman claimed against a firm of caterers for damage done to her dress through the spilling of hot coffee over it by a waiter in the defendants' employ. It appeared that the plaintiff was a guest at a luncheon and the defendants were the caterers and provided the waiters. The evidence did not disclose what was the cause of the untoward occurrence, but there was no doubt that a waiter whilst carrying a cup of coffee spilt the contents over the plaintiff's frock and damaged it. His Honour Judge Cluer is reported to have dismissed the action on the ground that "no negligence had been proved on the part of the waiter." With great respect to the learned County Court judge, we should have thought that the mere fact that the coffee left the cup carried by the waiter and was spilt on the plaintiff's costume was some evidence of negligence on the part of the former and, in the absence of an explanation exonerating him, was sufficient to establish the plaintiff's claim against his employer. That view is supported by *Scott* v. *London and St. Katherine Docks Co.* (1865), 3 H. & C. 596, and especially by the remarks of Erle, C.J., at p. 601, and by a recent case in the Court of Appeal, not yet reported, *Halliwell* v. *Venables*, where Scrutton, L.J., said that the mere happening of an accident unexplained might be and often was in itself evidence of negligence. An unpleasant impression is created by some observations which His Honour is reported to have made in this case. In the course of her evidence the plaintiff said that not only was her dress ruined, but that she was scalded by the hot liquid, whereupon the learned County Court judge is reported to have said: "You ought to have been, because of the thinness of the dresses you wear or the scantiness of them." It is regrettable that judges should make remarks of this kind. In this instance the comment of the judge was in the circumstances particularly inapt. The plaintiff would seem to have been entitled to sympathy rather than otherwise, especially having regard to His Honour's ruling regarding the evidence. We wonder whether the learned County Court judge seriously suggests that women should choose their dress material with a view to protection against being scalded by hot coffee discharged over them at a luncheon or dinner party? If so, perhaps a dainty costume of asbestos with tin foil "insertions" or a "creation" in good stout leather might appeal to him as suitable.

Teaching him to Walk.

The pedestrian, hinted the Minister of Transport the other day, will have to be dealt with suitably if he does not learn to take his part in the avoidance of accidents. In Berlin, says a newspaper report, two pedestrians have been actually charged with "homicide through culpable negligence" for failing to make way for a cyclist, who was thus forced to swerve and was killed by a car. The pedestrian and the cyclist are each of them often to blame for putting the motorist in difficulties. Without joining in an attack upon them as if they were the cause of most accidents or suggesting that they are foolish enough really to try conclusions with a motor vehicle, we feel that it is almost time something was done to the obstinate pedestrian who deliberately slows down, in crossing the road, when he hears a gentle warning from a motor car, the obstructive cyclists who ride three abreast (and wobble) in a narrow, winding road, refusing to give way to anything, and the abstracted jay-walkers who appear quite oblivious of all traffic. If it were merely a question of a little annoyance it would not matter much, in fact it might be salutary discipline for some impatient motorists. The real evil is that sometimes the careless or obstinate cyclist or pedestrian forces the careful motorist into a position of unforeseen danger. Cycling clubs rarely, if ever, offend. They keep an admirable formation, well on their proper side, and they seem immune from the habit of wobbling that is so disconcerting in the happy-go-lucky twos and threes. Pedestrians and motorists really ought to give and take. There is nothing to call for a feud between them. Hitherto so much has been done to educate and to penalise the motorist (naturally enough, because he is in charge of a powerful engine) that the sins of the pedestrian have not been properly recognised. Substantial fines upon pedestrians who intentionally, or even carelessly, endanger other road-users, might do something to make the roads safer, and raise the standard of manners of those who use the roads, whether on foot or awheel. There is quite a good case for legislation on these lines.

Damages for Loss of Publicity.

Where theatrical managers engage an actor or actress to play a particular part, that is a substantial term of the contract which must be fulfilled, or for the breach of which damages over and above the agreed salary may be recovered. Thus, in *Marbe* v. *George Edwardes (Daly's Theatre) Ltd.* [1928] 1 K.B. 269, an actress, who had acquired a considerable reputation in the United States, obtained an engagement with the managers of a London theatre to rehearse and play a named part in a named play from a certain date, at such times and at such theatres in the West End of London as the managers should from time to time direct at a salary of £100 for every week during the run of the play. By a collateral agreement the managers undertook that the actress's name should appear at the head of the cast, and up to the date of the dress rehearsal her name appeared there, and upon the electric light outside the theatre and elsewhere. On the day fixed for the commencement of the engagement the managers refused to allow the actress to appear in the play, either on that day or at all. The actress having brought an action against the managers for damages for breach of contract, including injury to reputation, the jury awarded her £3,000 for injury to her reputation beyond the payment or her salary. The verdict and finding of the jury were upheld on appeal. As Bankes, L.J., said, in the course of his judgment (at p. 281): "Where there has been a breach of a contract to employ an actress, whose reputation depends on the continued and successful practice of her art, and where the engagement is accompanied by promises of widespread publicity and advertisement which will probably lead to future opportunities following on successful performance, the court recognises that the damages for that breach may properly include such a sum as a jury may award to compensate the plaintiff for the loss of the reputation which would have been acquired, or damage to reputation already acquired, or, to use another expression, for loss of publicity." In the recent case of *Herbert Clayton and Jack Waller Ltd. and Others* v. *Oliver* (*Weekly Notes*, 15th Feb., 1930, p. 32), in June, 1927, the appellants engaged the respondent, an actor, to play one of the three leading parts in their new production at the London Hippodrome at a salary of £55 per week, the engagement to commence about the middle of September and to be for six weeks certain. The respondent was cast for a part which was not one of the three leading parts, and refused to appear in the production. The jury awarded the respondent £1,000 damages for loss of publicity in addition to £165 for loss of salary. The Court of Appeal held that on the evidence the verdict for loss of salary could not stand, but that the respondent was entitled to the £1,000 awarded for loss of publicity, and this was subsequently affirmed by the House of Lords.

Criminal Law and Practice.

TIME TO TAKE STOCK.—A London magistrate last week commented on the frequency with which he had before him young men, in receipt of unemployment insurance benefit, charged with offences of dishonesty. In his opinion the "dole" was helping to make criminals of young fellows who give up situations and take to stealing.

A day or two later another magistrate expressed himself as getting tired of binding over first offenders.

We find ourselves in agreement with the sentiments of both, though we believe whole-heartedly in probation and we have no desire to see unemployed people in want. What we feel, and what we take the magistrates to mean, is that the too easy grant of doles inevitably encourages sloth and leads to general demoralisation; while the too free use of probation in the case of so-called first offenders, some of whom have really committed many offences before being caught, however aggravated their offence, is likely to create the impression that no one will ever be sent to prison until he has been bound over at least once. The prevalence of crimes such as thefts of or by means of motor cars, shop-breaking and bag-snatching, committed by young men in their 'teens or their twenties, should serve to make us pause and take stock of the situation. The question of unemployment insurance is unfortunately involved in a good deal of political controversy, but we ought all, whatever our politics, to combine to counter any tendency towards fostering laziness and breeding crime among the young. Equally, probation's most convinced advocates should be the first to raise their voices if they see the system being mis-applied.

DEFINING AGE LIMITS.—In a recent issue (74 SOL. J. 161) we drew attention in "An Ambiguous Calculation" to a submission by counsel at the Central Criminal Court to the effect that a phrase in a proviso in a statute which referred to "a man of twenty-three years of age or under" was capable of two interpretations: (1) that it meant a man until he reached his twenty-fourth birthday; and (2) that it did not apply to a man who had passed his twenty-third birthday. In that case the recorder was clearly of opinion that "a man of twenty-three" meant until he was twenty-four. Curiously enough, another question of this nature was before the Court of Criminal Appeal on the 17th March (*Rex.* v. *Scoffin*, 74 SOL. J. 216). In that case the appellant, who had been convicted of petty larceny at Rochdale on the 22nd January, was under the age of twenty-one at the date of the conviction. At the Manchester Assizes, to which he was sent for sentence, he was sentenced to three years' detention in a Borstal institution under s. 10 of the Criminal Justice Administration Act, 1914, as amended by s. 46 (1) of the Criminal Justice Act, 1925, which provides that he may be so detained in certain circumstances if it appears to the court that he is not less than sixteen nor more than twenty-one years of age. At the date of his sentence at the assizes, however, the appellant was two days over the twenty-one years. The Court of Criminal Appeal, allowing the appeal against sentence, substituted a sentence of six months' imprisonment in the second division, and said that there was no doubt that the appellant was above the age referred to in the statute. At the Central Criminal Court, in the first case, the words of the statute were "a man of twenty-three years of age or under," in the present case the words are "nor more than twenty-one years of age," which is the same thing as saying "twenty-one years or under," and on that view, according to the recorder, he would be twenty-one years or under until he reached his twenty-second birthday. That conclusion was not accepted by the Court of Criminal Appeal, however, who have held that the appellant was more than twenty-one years of age as soon as he had passed his twenty-first birthday. A submission to that effect was given in our previous reference to this matter, where we also anticipated the court's suggestion that the statute might have been somewhat differently worded.

The Defects of the Gaming Laws.

THE critic of our present laws as to betting, gaming, and lotteries has a very easy task. Thus, sixpenny whist drives conducted on the usual system are prohibited under penalty (*Morris* v. *Godfrey* (1912), 28 T.L.R. 401; *R.* v. *Hendrick* (1921), 37 T.L.R. 447), whereas any speculator who could corner the whole wheat supply of the country, and put all the people in it to ransom for their bread, would do so with the law's full permission. Again, s. 2 of the "Act for suppressing lotteries," 1698, 10 & 11 William III, c. 17, explicitly forbids the keeping or organising of lotteries "whether publicly or privately," and sweepstakes on races after the ordinary model are undoubtedly lotteries: *Hardwick* v. *Lane* [1904] 1 K.B. 204. Therefore the organiser of an office or club sweepstake on the Derby or Grand National on the humblest scale commits a public nuisance and is liable to the fine of £500 under the Act. Wild speculation on the Stock Exchange, however, is permissible to any figure. Then again the poor man's bookmaker pursues an illegal business, whereas the rich man's conducts his with open advertisements and the willing help of the Post Office, which accounts him a good customer.

The statutes as to gaming have been passed at various times with diverse objects. Perhaps the earliest unrepealed is that of 1541, 33 Hen. VIII, c. 9. That it can even now be invoked in certain cases is apparent from *Murphy* v. *Arrow* [1897] 2 Q.B. 527, to the effect that it is the statutory warrant, through a chain of later Acts, for binding over persons found in betting-houses not to frequent, etc. It does not follow, of course, that because a law is an old one it is either out of date or ineffective. For this proposition Magna Charta may be cited, and the Habeas Corpus Act. The statute of Henry VIII however, was passed in order that "artificers, craftsmen, husbandmen, labourers, apprentices," etc., should be compelled to practise archery instead of playing games, and may therefore be held as an inappropriate survival. Similarly, the Act of William III, cited above, was framed, not to prevent gambling, but to ensure that gamblers should take tickets in the State lotteries, for which purpose it was necessary to destroy competition. Probably also the eighteenth century Acts against excessive and deceitful gaming were passed more with the view to prevent young men of family from dissipating their inheritances than to protect the wives and children of poor men from hardship. The dissipation of a great inheritance is not now considered to be a national misfortune; indeed, those paying modern estate duties might perhaps suppose that it is now regarded by successive Governments as a highly laudable object.

In 1738 an Act was passed, 12 Geo. II, c. 28, which, after much thunderous preamble and expressions of grief that the good and wholesome laws previously passed had not effectively answered their good ends, forbade certain card games, namely, Ace of Hearts, Pharaoh, Basset and Hazard. The gambler's answer was to invent and play a new game called "Passage," which was forbidden the next year (13 Geo. II, c. 19), together with "every other game or games invented or to be invented," etc.—by way of gambling. These and similar statutes still survive, and were considered at length by Lord BRAMPTON as HAWKINS, J., in his classical judgment in the "baccarat case": *Jenks* v. *Turpin* (1884), 13 Q.B.D. 505, to the conclusion (p. 524) that every game of cards which is not a game of mere skill is unlawful within them. The reference to the mere skill may be regarded as superfluous, for no game of cards, depending, as all must do, on the fall of them, can be a game of mere skill. Patience, a game requiring considerable skill, is therefore as much within the prohibition as the rest, for the good player is constantly defeated by the cards.

In this welter of confusion, in fact, no judge has ventured to lay down exactly in what circumstances playing at cards for money is lawful, though the statement has constantly been made from the Bench that such circumstances do exist. When the Gaming Acts are found to lead to absurd results

they are either merely patched, a course which was followed in the repeal of s. 2 of the Gaming Act, 1835, by the Gaming Act, 1922 (after it was found that money paid by cheque on lost bets could be recovered), or, worse still, the police are instructed to ignore the law, which in effect is the course taken by the Home Secretary in respect of "private" lotteries. This naturally tends to bring the whole body of law into contempt. Incidentally, enormous lotteries with fortunes as prizes have been suffered by the authorities because they are nominally private (though anyone who wished could buy a ticket) while publicans and others who have promoted small ones among their customers have been harried.

The need of reform is obvious, and perhaps it is unnecessary to press it further. Some of the points as to lotteries were covered by the report of a Select Committee in 1908. Reform, however, has not hitherto come about, because of the highly controversial issues as to the basis of it. A large body of "sportsmen" stand opposed to those who consider gambling a vice, and object to the legal regulation or even recognition of vice.

The statesman who has sufficient courage to face the problem as a whole—so far he has not materialised—will have to offend both these parties. He will have to put some limit on gambling, and even discourage it as on the whole uneconomic and harmful; but he must not at the instance of a persistent and perhaps fanatical minority forbid games and pastimes which are not against the conscience of the great majority of the people. As to "recognition" of vice, the principle was wholly thrown away so long ago as 1886, when the revenue authorities obtained their decision in *Partridge* v. *Mallandaine*, 18 Q.B.D. 276, that bookmakers are taxable on their profits. Since then, the establishment of the "Tote" has consolidated the position of the "vice," which is recognised, regulated and politely compelled in return to contribute to the Exchequer. Incidentally, it may be observed that *Powell* v. *Kempton Park Racecourse* [1899] A.C., 143, which is the charter for ready-money bookmaking at races, was practically decided on a legal fiction, namely, that bookmakers roam about when on business. It would be more dignified in any new legislation to recognise the fact that they have established pitches where the small minority of backers who win can find them and collect what is due to them.

The prohibition of street betting, together with the recognition of credit bookmakers, creates a situation of extreme difficulty. When Mr. CLYNES answered the question as to sweepstakes in Parliament, he concluded "I am glad to have the opportunity of making this statement, which ought to dispose once for all of the suggestion that in this matter there is one law for the rich and another for the poor." Post-office facilities in fact make betting easy for the well-to-do, when the poor man has to make his bet furtively and against the law. If street betting cannot effectively be forbidden, which appears to be the case, it should be regulated and controlled in a straightforward way. One would like to see some prohibition against bookmakers dealing with habitual gamblers, with a definition aimed at those who spend on bets money really needed for their wives and families. The prohibition against serving habitual drunkards, however, is not a very hopeful precedent. The law as to credit betting for those who can afford it—tolerating it, but presenting no facilities for recovery of bets—appears to work fairly, though it may be open to question whether the "new consideration," which makes a gambling debt recoverable, has not been somewhat too readily found by judges who may have allowed their natural dislike of a cheat to obscure the principle of the Act of 1845.

Our present tolerance of gambling in commodities and even in the necessities of life, such as corn, is essentially a modern development, due probably to the fact that, with the present facilities for trade, the gambler who seeks to make a "corner" or monopoly, has the odds so much against him that it is not worth while to prohibit his activities. The fears of ancient law-givers were no doubt well justified. "He that withholdeth corn, the people shall curse him"—Prov. XI, 26, and our laws against forestalling, engrossing and regrating were abolished less than a hundred years ago. In *R* v. *Waddington* (1800), 1 East, 143, a respectable Kentish gentleman was fined £500 for making a corner in hops, which modern legislators and judges would hardly treat as necessities of life, and the judgments reveal apprehensions not shared in ordinary times by the present generation, though it may be noted that during the war the rules which fixed the prices of food and prohibited the hoarding of it were in effect directed against the ancient offences of forestalling and regrating. In *Bryan* v. *Lewis* (1826), R. & M., 386, Lord TENTERDEN held that a contract for "futures" in goods was in essence a wager, and therefore void, if the contractor had neither a prior contract to buy them nor any reasonable expectation of receiving them. In *Hibblewhite* v. *McMorine* (1839), 5 M. & W. 462, however, he was over-ruled, when the extreme inconvenience of such a doctrine to contractors for the supply of the Army, Navy, etc., was pointed out. By our present law, of course, both "futures" and options in goods and securities are valid in *bona fide* transactions which are not by way of gambling. Possibly, therefore, anyone who tried to make a "corner" would be frustrated by finding that his contracts for delivery were unenforceable.

Actio Personalis Moritur cum Persona.

WHERE a contract between two individuals is of a purely personal nature and the performance of it is prevented by death, that is, by the act of God, there is no breach of the contract, in the absence of any stipulation to the contrary, on which any action will lie against an executor. *Actio personalis moritur cum persona.* There have been numerous cases involving an interpretation of this well-known common law maxim, cases where the great variation of facts sometimes tends to obscure the underlying principle, and in which, at times, great difficulty is experienced in ascertaining the exact limitation of the results of the application of the principle. For example, personal representatives may not only acquire the right to recover money actually earned during the deceased's lifetime, but are entitled to sue for moneys accruing due after the deathwhere it is specifically intended that such remuneration should continue payable (*Wilson* v. *Harper* [1908] 2 Ch. 370). The general principle is concisely stated by WILLES, J., in *Farrow* v. *Wilson and Wife* (1869), L.R. C.P. 744, where he said: "Where, however, personal considerations are of the foundation of the contract, as in cases of principal and agent and master and servant, the death of either party puts an end to the relation, and, in respect of service after death, the contract is dissolved, unless there be a stipulation express or implied to the contrary." The agreement for a period of apprenticeship is essentially of this personal character, and in one of the leading cases on that subject (*Whincup* v. *Hughes*, 19 W.R. 439; (1871), L.R. C.P. 78), a boy who was apprenticed to a watchmaker and jeweller for a term of six years, had only completed one year of his time when his master died. The boy's father thereupon sought to recover the whole or part of the £25 premium which he had paid from the executor of the dead man. BRETT, J., after pointing out that the death was no breach of the contract, said that the case came within the rule that where a sum of money had been paid for an entire consideration, and there was only a partial failure of consideration, neither the whole nor any part of such sum could be recovered. *Whincup's Case* was substantially followed in *Ferns* v. *Carr*, 29 SOL. J. 207; 28 Ch. D. 409, where it was held that an articled clerk for whose articles a premium of £150 had been paid to a solicitor,

was not entitled to recover any part of the sum from the estate of the solicitor who had died during the currency of the articles. Similar considerations apply in the case of agreements between master and servant on the death of either party, and death, of course, puts an end to essentially personal contracts dependent on individual skill, such as the production of literary and artistic works of various kinds (*Hall* v. *Wright*, 8 W.R. 160; (1859), E.B. & E., 765 Ex. Ch.).

As pointed out above, however, money actually earned during the lifetime of an individual can be claimed by his representative. In *Stubbs* v. *The Holywell Railway Co.* (1867), L.R. 2, Ex. 311, two instalments in respect of engineering work were overdue to the deceased at the date of his death and his personal representative successfully sued for them despite the defendants' contention that they were only liable on a *quantum meruit* for the amount of the work actually done up to the date of the death. CHANNELL, B., said: "It is not denied that this contract was one of personal confidence. That being so, on the death of STUBBS it was at an end, so far as the future was concerned. But although that be so, we are not to prevent what was done during his life, under the contract, from having its proper effect."

In addition to the common law aspect of the matter, there is the type of case where a statutory obligation is imposed upon an individual and a statutory mode for enforcing it is provided, and the obligation being personal it must end with death. In *In re Harrington; Wilder* v. *Turner*, 52 SOL. J. 855; [1908] 2 Ch. 687, when a married woman applied to rank as a creditor against the estate of the putative father of her bastard child in respect of arrears of payments under an affiliation order, WARRINGTON, J., pointed out that no case had been referred to which directly supported the proposition that the liability under an affiliation order was purely personal, and that if the father died the mother had no claim against his estate, but still less was there any case in which the holder of such an order had been allowed to prove against the estate of a deceased father. His lordship added that inasmuch as the statutory mode of enforcing the payment had ceased, the obligation, which in terms was only an obligation on the father himself, and ceased with his life, ceased also.

Before 1916, it had been held that in the absence of special damage to the property of the promisee an action could not be maintained against the personal representatives of the promisor in the case of a breach of promise to marry (*Finlay* v. *Chirney*, 32 SOL. J. 272; (1888), 20 Q.B.D. 494), but since that date *Quirk* v. *Thomas*, 60 SOL. J. 174; [1916] 1 K.B. 516, has established that even if special damage be proved no action will lie after the death of the promisor. The special damage alleged in that case was that the promisee had given up a profitable business in order to marry, and in the course of his judgment, PHILLIMORE, L.J., said that the loss to the plaintiff here did not arise from the breach of promise to marry, it was something which she agreed to give up in order to induce him to marry her, something by which she bought, as it were, his promise.

As regards the position between master and servant the representatives or relatives of a servant could not originally bring an action against the master, who by breach of his common law duty was responsible for the death of his servant, but, as is well known, statutory remedies have been devised to meet such a circumstance, and by Lord Campbell's Act of 1846, as amended by the Fatal Accidents Acts, 1864 and 1908, provision is now made in certain circumstances for dependent relatives to be entitled to claim a lump sum in respect of the deprivation of financial support previously contributed by the deceased person.

THE KING'S BIRTHDAY.

By Order of the Lord Chancellor, the Offices of the County Courts and the District Registries of the High Court will be closed on the 3rd June, 1930, the day appointed to be kept as the King's Birthday, unless in any particular case the Lord Chancellor otherwise directs.

Some De-rating Decisions.

A START has been made by the Divisional Court on the numerous cases coming to them by way of special case under the recent rating Acts.

In the first case heard, that of *Hastings* v. *Revenue Officer for Walsingham R.D.C.*, reported in *The Times* of the 9th April, the question at issue was whether sporting rights over agricultural land, which were reserved to the landowner and not let, could be assessed separately from the land over which they were exercised, in which case the assessment would appear in the general valuation list and the landowner would not get the benefit of de-rating.

Prior to the Rating Act, 1874, sporting rights were not assessable as separate hereditaments, though if they were vested in the occupier of the land, i.e., not severed, they could be taken into consideration in ascertaining the annual value of the land (*R.* v. *Williams* (1854), 2 W.R. 410). The Act of 1874 provided in effect (s 6 (1)), that if land was let at a rent reserving the sporting rights, the latter were not to be separately valued or rated, but the gross and rateable value of the land was to be ascertained as if the sporting rights were not severed; the tenant of the land, however, was authorised to require the assessment committee to certify in the valuation list the added value of the sporting rights, and he was given the right to deduct from his rent the proportion of rates due to such added value, unless he had agreed with his landlord to pay such rates.

The Agricultural Rates Act, 1896 (which was repealed by the Local Government Act, 1929, as from 1st April, 1930), provided that the rateable value of agricultural land should be inserted in a separate column for the benefit of the partial de-rating given by that Act. The general, but not universal, opinion was that this Act made no difference in the law as to the rating of reserved sporting rights not let, and as a result the value was to be added to that of the land, so that the landowner got the benefit of the partial de-rating under that and the subsequent Act of 1923.

Some assessment committees however, inserted them as separate hereditaments.

The Local Government Act, 1929, provided (s. 67) that as from the appointed day (1st October, 1929), agricultural land should be deemed to have no rateable value, and by the Agricultural Rates Act, 1929, agricultural land was freed from rates as from 1st April, 1929.

The appellant is the owner of farms in Norfolk, the sporting rights on which are reserved and exercised by him and he was assessed in the new valuation list in respect of such rights, and on an appeal against the decision of the assessment committee a special case was taken by consent to the High Court.

The Court (AVORY, L.C.J., and BRANSON, J.) held that the assessment committee was correct in inserting the reserved rights as a separate hereditament. The Lord Chief Justice, giving judgment, said he thought that that conclusion followed from the Rating Act, 1874, though it might be that some of the machinery in s. 6 of that Act was, though not expressly repealed, rendered obsolete. In sub-s. (1) of that section the words were "The said rights shall not be separately valued or rated"—a different thing from saying they were not to be valued or rated. Sporting rights when severed, no less than land mainly or exclusively used for sport, were excluded from agricultural land under the recent Acts.

This decision may usefully be compared with one recently reported in 94 J.P. 77, on a case stated by justices as to the validity of a distress warrant for a rate made in October, 1928, on sporting rights. In that case the Lord Chief Justice said: "In our view s. 6 of the Act" (the Rating Act, 1874) "must be read as prescribing the persons upon whom this liability" (that of being rated) "is to fall and unless the appellant is shown to be a person liable under that section, he is, we think,

entitled to succeed on this appeal. Sub-section (1) of that section applies to a case where the owner of the land has let the land reserving to himself the right of sporting, *vide Rogers* v. *St. Germans Union*. In that case the right of sporting is not to be separately rated." Mr. Justice AVORY concurred.

It is said that the question of the assessment or non-assessment of sporting rights means a difference of some £50,000 in the assessable value of the County of Norfolk alone. It is believed that *Lord Hastings's Case* will be taken to the House of Lords. It should be noted, however, that this case does not in any way deal with the question of sporting rights not severed from the land, as would probably be the case with the rights in the case of his lordship's woodlands, which are unlikely to be let. Woodlands are under the Acts of 1928 and 1929 included in the definition of agricultural land.

The next two cases decided by the court dealt with industrial hereditaments. In *Ideal Cleaners & Dyers* v. *West Middlesex Assessment Committee & R.O. for West Middlesex* (*Times*, 15th April), the question for decision was whether a branch "shop" one of a 100 occupied by the appellants, whose business was the cleaning and dyeing of garments and the cleaning and re-blocking of hats, was rightly excluded from the special lists.

Articles received from customers at these premises were sent to the appellant's central factory and after being cleaned and/or dyed, were returned to the branch in a rough state. At each branch was a steam press and a hat blocking apparatus, with a steam pan and by means of one of these the garment, or hat, was pressed, or blocked, before being returned to the customer. The premises were registered under the Factory and Workshops Act and were regularly visited by an inspector.

The decision of the Court was that the premises were not industrial hereditaments within the Rating and Valuation (Apportionment) Act, 1928, being primarily used for the purposes of a retail shop (s. 3 (1) (6)), and if there was any doubt on that head, they were excluded by para. (*f*) as being primarily used for purposes which were not those of a factory or workshop.

The next case, *R.O. Stoke-on-Trent & Assessment Committee Stoke-on-Trent & Potteries Electric Traction Ltd.* (*Times*, 16th April), was an appeal from one of the quarter sessions decisions referred to in the recent articles in these columns and reprinted in pamphlet form under the title of "Some De-rating Decisions at Quarter Sessions." The question there at issue affects a considerable number of properties throughout the country. Shortly put, it is whether a vehicle repairing business is to rank as an industrial hereditament if the repair is mainly confined to the occupiers' own vehicles.

It was pointed out in the articles referred to (p. 4 of Some De-rating Decisions) that diverse views had been expressed by different quarter sessions.

In the *Stoke-on-Trent Case* the recorder held that the Act did not warrant any distinction being drawn between premises used to supply the needs of the occupiers and those used to supply the needs of others, and that the premises were industrial hereditaments.

The Divisional Court has, however, reversed this decision, and held that the premises were excluded under s. 3 (1) (*f*) by reason of the fact that the primary user was for the purposes of the company's undertaking (i.e., the running for public hire of a fleet of omnibuses), and that anything which savoured of a factory or workshop was quite ancillary.

The case of *Nash* v. *Hollinstead* [1901] 1 K.B. 700, was referred to as deciding the principle that the processes were not carried on for the purposes of trade unless the article which was manufactured was manufactured for *direct* gain.

This decision must, it would seem, be held to apply to the case of a wharf used for the repair of the occupiers' own vessels, and the decision of the London County Sessions, holding such a wharf to be an industrial hereditament, must be held to have been wrong so long as the Divisional Court's judgment stands.

Considered judgments were delivered by the Divisional Court in a number of cases on the 16th April (*Times*, 17*th April*). There was no particular connexion between the different cases, save that they all depended on the application of the proviso in s. 3 (1) of the Act of 1928, which excludes from the operation of the Act premises which, though they comprise a factory or workshop, are primarily used for certain other purposes, including (para. (*f*)) any purposes which are not those of a factory or workshop.

It was urged in argument that the exclusion proviso only applied where the hereditament was occupied for two purposes distinct and severable, one of which was such that, if carried on in a separate hereditament, such hereditament would *not* be a factory or workshop within the F. & W. Acts. This argument was dismissed in the judgment on the ground that one of the exclusions was of a hereditament primarily occupied and used for the purpose of a public supply undertaking, and, as was pointed out in the judgment of the Lord Chief Justice, it is hardly possible to conceive of a public supply undertaking which is not a factory or workshop.

It was further argued that the distinction between industrial and non-industrial hereditaments showed that it was intended that if a hereditament was used in aid of industry it was to come within the operation of the Act. This argument was also dismissed as untenable. In the result decisions were given with regard to the various hereditaments under consideration as follows :—

In *R. O. Dudley* v. *Lloyds' Testing Co. Ltd.* it was held (AVORY, J., dissenting) that premises used for the purpose of testing cables did not constitute an industrial hereditament, as the company's business was not to adapt cables for sale, but to see that they were so adapted.

In *R. O. Manchester* v. *Manchester Ass. Com. and Union Cold Storage Co. Ltd.* it was held that the company's cold storage premises were primarily used for the purpose of storage and consequently were not industrial hereditaments. Probably the company hardly anticipated any other decision.

In *R. O. Camberwell* v. *Camberwell Ass. Com. and Watney Combe Reid Ltd.* it was held that bottling stores in which beer (delivered to the stores in bulk) was carbonated and bottled for delivery to the trade, there being also plant for bottle washing, corking and labelling, were not within the Act, as the process of carbonation for adapting the beer for sale was a comparatively minor part of the processes carried on in the stores. Bottling was part of a distributive wholesale business and the premises, being primarily used for such business were excluded by s. 3 (1) (e).

In *R. O. Poplar* v. *Poplar Ass. Com. and Liberty Oils Ltd.* it was held that the refining and blending of oils so as to produce something different from any of the ingredients was a manufacturing process, and as the premises in question in the case were primarily used for this purpose they constituted an industrial hereditament.

It will, of course, be remembered that nearly every property which is primarily an industrial hereditament comprises also parts such as offices and stables or garages which are non-industrial, and if the annual value of such parts is more than one-tenth of the annual value of the industrial parts, there has to be an apportionment of values. This question, however, so far as it is one of fact, does not come within the purview of the High Court.

ROYAL COMMISSION ON THE CIVIL SERVICE.

Meetings of the Royal Commission on the Civil Service for the hearing of evidence will be held in the Conference Room of the Board of Trade, Great George-street, S.W.1, at 10.30 a.m. on 12th, 13th, 14th, 15th and 16th May. Evidence will be heard from representatives of the Universities of Oxford, Cambridge, and London, the chairman of the Board of Inland Revenue, the Association of Officers of Taxes, and (if time permits) the National Association for Employment of Regular Sailors, Soldiers, and Airmen.

A Solicitors' Fidelity Guarantee Fund.

In an article published on 7th September last year, "A Solicitor's Authority to Receive Money" (73 Sol. J. 578), we discussed a possible guarantee of the integrity of its individual members by the profession generally. We now note that, since that date, the Law Practitioners Amendment (Solicitors' Fidelity Guarantee Fund) Act, 1929, has been passed in New Zealand for the express purpose of raising and establishing a guarantee fund there to this end. The fund is to be the property of the New Zealand Law Society, to be raised by annual fees payable by every solicitor on taking out his certificate to practise, and, so far as such fees do not meet the claims on the fund, by special levies on members of the profession, payable under the society's resolutions from time to time. By s. 15 of the Act, the fund is primarily to be held and applied "for the purpose of reimbursing persons who may suffer pecuniary loss by reason of the theft by a solicitor with respect to whom this Act applies, or by his servant or agent, of any money or other valuable property entrusted to him or to his servant or agent, in the course of his practice as a solicitor, including any money or other valuable property as aforesaid entrusted to him as a solicitor-trustee." It may be observed that this is a very full indemnity, with apparently no upper limit, and including loss suffered by the fraud of clerks, and from embezzlement by a solicitor-trustee. The society, however, has power to give preference in cases of hardship, or where the claim does not exceed £500. Reference to p. 579 of our previous volume will prove that our own suggestion was for a more limited indemnity, and one especially directed to prevent hardship to people of little education, or who might be unaccustomed to business and the handling of money. As a true story, a tradesman in a small way of business, having saved a few hundred pounds some time ago, entrusted his money to a local solicitor of bustling methods, who said he could invest it for him on mortgage with good interest. One of the man's friends, having some doubt of the solicitor, suggested that he ought to see the deeds. The solicitor put him off for some time, and at last sent for him, and, throwing down a labelled bundle on a table, told his client to take his deeds and go elsewhere, for he did not care to deal with people who mistrusted him. The man left the office disconcerted, only to find out a few months later, when the solicitor absconded, that the deeds related to an expired leasehold and had nothing to do with his money. Possibly even an educated person, seeing that the deeds appeared genuine, might have been deceived, but, as pointed out in the previous article, it is the small cases which bring discredit on the profession, and, if such a fund was established here, a maximum limit to the guarantee to any one client, or in respect of any one transaction, might very well be fixed. No such limit appears in the New Zealand Act, and for the profession to guarantee the honesty of all its members' servants may appear too wide a responsibility. In the case of a dishonest clerk, the solicitor is fully liable to his client, and, if he cannot discharge his liability, and becomes bankrupt, he suffers a misfortune which is not necessarily a slur on his honour, or that of the profession. Indemnity against misappropriation by a solicitor-trustee or executor might also be regarded as beyond the proper scope of a compulsory scheme, at least until the workings of a more limited one could be observed. For in such case the testator or settlor takes a special risk by reason of his trust in a particular individual, and it is hardly fair to ask solicitors who do not happen to be family trustees to guarantee the solvency and honesty of others in carrying out duties not strictly professional. And this observation must especially apply to a sole trustee or executor.

In the previous article the suggestion was made that the managers of any properly established guarantee fund would surely have power to inquire into the affairs of firms which for any reason were under suspicion. In fact s. 23 of the New Zealand statute establishes this right, and there is also a provision in s. 16, freeing the fund from liability for losses to any person incurred by reason of that person dealing with a solicitor or firm after receiving an official warning against doing so. It is of course also provided that such notification by the council, made without malice, shall not give rise to any action for libel. The audit of the accounts of a big firm of family solicitors of the type of those mentioned in the previous article, who failed with liabilities running into hundreds of thousands of pounds, would of course, be an extraordinarily difficult matter, especially if the partners were hostile. Such firms in the course of business deal with large sums of cash on behalf of dozens of different clients, and misappropriation, and concealment of misappropriation, is particularly easy. The auditor's task, however, though difficult, might yet result in exposing a long concealed insolvency, and preventing further loss. The New Zealand statute, therefore, No. 15 of 1929, is certainly worth the consideration of the profession here, and could no doubt be modified so as to be made the basis of a somewhat less ambitious scheme in this country.

Company Law and Practice.

XXVII.

Not infrequently payments are made to directors of a company on retirement, or as compensation for loss of office. Disclosure of such payments, when made out of the assets of the company, ought to be made to the shareholders of the company, and the payments approved by them; such payments being pecuniary benefits which the directors are not justified in taking unless with the sanction of the shareholders of the company, to whom the directors stand, for this purpose, in the relation of trustees. This has been the law for many years, and is well illustrated by the case of *General Exchange Bank* v. *Horner* (1870), 9 Eq. 480, where an intermediary who had arranged an amalgamation between two banks paid a portion of the commission received by him from the assets of one of the two banks to the directors of such bank, by previous arrangement made with such directors, and without the approval of the shareholders, and Lord Romilly, M.R., held that these directors were liable to make good the sums so paid to them. The case of *Kaye* v. *Croydon Tramways Company* [1898] 1 Ch. 358, shows how necessary it is that shareholders should be fully informed when payments of this nature are contemplated, and that it is not sufficient to give them a general notice of a meeting to consider the agreement which contains provisions for the payment of compensation, without giving an indication in the notice that the agreement does contain such provisions.

The new legislation has now laid down certain statutory provisions which make such payments illegal under certain conditions, but which do not appear to affect to any great extent the already existing law on the subject, though perhaps the position is somewhat clarified. Section 150 of the Companies Act, 1929, is the material section, and it deals (*inter alia*) with payments to be made to directors by way of compensation for loss of office, or as consideration for or in connexion with retirement from office, being payments made in connexion with the transfer of the whole or any part of the undertaking or property of a company. But payments in this sense are not limited merely to cash payments, but are extended to any other sort of valuable consideration, and in particular cover the case where a director gets an enhanced price for shares in the company held by him, in which case the excess over the price which could at the time have been obtained by other holders of the like shares, is treated as being the compensatory payment. In the case of other forms of valuable consideration, the money value of the consideration is treated as the compensatory payment (s. 150 (5)). Such payments are, by the section, declared to be illegal unless

particulars with respect to the proposed payment, including the amount, have been disclosed to the members of the company, and the proposal approved by the company; and where such a payment is made to a director in contravention of the section, the amount received by him is to be deemed to have been received by him in trust for the company. It is difficult to see in what direction the already existing law derived from the two cases above referred to and other similar ones is thereby carried any further; but the section contains in its last sub-section a provision that nothing therein is to prejudice the operation of any rule of law requiring disclosure to be made with respect to such payments as are mentioned in the section or other similar payments.

The section also requires disclosure in the case of certain other payments, and imposes a penalty on delinquent directors in certain events; in this connexion it is satisfactory to observe that there are signs of an intention to take proceedings to enforce the penalties imposed by the Act, a form of activity which is long overdue, and which certainly ought to prevent many of the abuses which from time to time come to light too late to be prevented. Further, there will be a certain satisfaction given to those responsible for the drafting of the Act by the knowledge that the fifty-seven new penalties imposed have not been imposed in vain, even if no one else can obtain a similar feeling of satisfaction.

Where a compensatory payment, including any of the other forms of consideration referred to above, is to be made to a director in connexion with the transfer, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, such director must take all reasonable steps to secure that particulars thereof, including the amount, are sent with any notice of the offer made for their shares which is given to any shareholders. Failure by a director to take such steps, or failure by a person properly required by the director in question so to do, to send the particulars, entails liability to a maximum fine of £25, and any sum received by the director on account of the payment is to be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made (s. 150 (3) and (4)). This provision does seem to extend the law, and it is easy to see that it is likely to be a protection to shareholders; and will certainly be a guide to them, in cases where directors recommend their shareholders to accept an offer for their shares. Doubtless questions will arise with regard to the interpretation of these provisions, and at once one begins to wonder what is "a reasonable step?" But it appears to be so much a matter to be determined in the light of the facts of each particular case that speculation would be wasted.

(*To be continued.*)

A Conveyancer's Diary.

Statutory Trustees—Additional or Larger Powers—Partition.

Yet another case regarding undivided shares and the effect of the statutory trusts is *Re Thomas; Thomas* v. *Thomas* [1930] 1 Ch. 194. The case is an interesting one and rather curious in one respect, for it shows that trustees holding upon the statutory trusts may be deprived of powers which they would have had if they had not been constituted statutory trustees.

Under the will of a testator and in the events which happened his residuary estate (which consisted of freehold and leasehold property and investments) was on the 31st December, 1925, vested in the trustees of the will upon trust as to one moiety for a son absolutely; as to one-fourth upon trust for a daughter for life and after her death for her children at twenty-one or marriage; and as to the remaining one-fourth for another daughter for life and after her death for her children at twenty-one or marriage. There was an accruer clause in default of either daughter's children attaining a vested interest.

The will contained a wide power of appropriation empowering the trustees, with the consent of the majority in number of the testator's adult children and grandchildren for the time being interested in possession or expectancy in his residuary estate, to allot or appropriate specifically any part of his estate (real and personal) in or towards satisfaction of the share or shares of the children or grandchildren in the residuary estate and to determine the value for such appropriation or allotment accordingly.

From the commencement of the L.P.A., 1925, the trustees held the property upon the statutory trusts under the 1st Sched., Pt. IV. para. 1 (1).

It being considered desirable to partition the freeholds and leaseholds and allot the investments, the trustees and the three children (none of the grandchildren having attained vested interests) entered into an agreement for that purpose based upon a proper valuation of the properties.

The matter came before the court on an originating summons to determine the question whether the trustees could exercise the power of appropriation contained in the will.

It was said that, although before the commencement of the L.P.A. the trustees could have carried out the appropriation, they could not do so afterwards because they held upon the statutory trusts by which the power to appropriate was over-ridden.

Against this, reliance was placed firstly upon s. 28 (1) of the L.P.A., 1925, as amended by the L.P. Amend. A., 1926, which, so far as material, is as follows:—

> "Trustees for sale shall in relation to land or to manorial incidents and to the proceeds of sale, have all the powers of a tenant for life and the trustees of a settlement under the Settled Land Act, 1925 . . . *and where by statute settled land is or becomes vested in the trustees of the settlement upon the statutory trusts, such trustees and their successors in office shall also have all the additional or larger powers (if any) conferred by the settlement on the tenant for life, statutory owner or trustees of the settlement.*"

The words in italics were added by the L.P. Amend. A., 1926.

Farwell, J., held that the sub-section did not apply to enable the trustees to exercise the power of partition as that power would *pro tanto* defeat the over-riding statutory trust for sale and he cited *Re Flint* [1927] 1 Ch. 570, and *Bernhardt* v. *Galsworthy* [1929] 1 Ch. 549, which show that the statutory trusts are over-riding trusts.

The result, therefore, is that, notwithstanding the amendment made in the sub-section by the L.P. Amend. A., trustees, to which the amendment applies, namely, trustees holding formerly settled land on the statutory trusts, cannot exercise a power conferred on them by the instrument creating the trust if such power would defeat or in part defeat the trust for sale. That being so, it is not easy to see what additional or larger powers the sub-section as amended enables statutory trustees to exercise.

It should be observed that in *Re Flint* and in *Bernhardt* v. *Galsworthy*, the rights which it was held were overridden by the statutory trusts were rights of other parties which would have prevented the trustees from carrying out the trusts, not rights conferred on the trustees themselves..

In *Re Flint* a testator, having devised his property to trustees and settled the entirety upon trust for various persons in undivided shares, empowered his trustees to sell and gave a son a right of pre-emption over a part of the property. The land became subject to the statutory trusts and it was held that the right of pre-emption was not enforceable against the trustees.

In *Bernhardt* v. *Galsworthy* a decree had been made in an administration action for the administration of the trusts of

a will and a receiver had been appointed by the court, who was receiving the rents and distributing them amongst the persons entitled. On the commencement of the L.P.A., the property became subject to the statutory trusts, and it was held that the trustees could exercise those trusts without the sanction of the court, because the trusts of the will which were being administered were overridden by the statutory trusts.

It may be doubted whether those cases are authorities for the proposition that powers conferred on the trustees themselves are rendered unexercisable, at any rate, where the land was formerly settled land, in view of the amendment introduced into s. 28 (1) which was apparently enacted for the purpose of preserving such powers.

I confess that I am unable to see why a power to partition is not an "additional or larger power" conferred on the trustees. The power does not restrict or hinder the exercise of the statutory trusts, but provides an alternative method of dealing with the property which the trustees may adopt if they choose, and I should have thought that trustees with such a power have an "additional or larger power" than trustees without it. It seems, however, that is not so, with the somewhat strange result that the imposition of the statutory trusts takes away from trustees powers which they had before, notwithstanding the well-meant efforts of the Legislature in the L.P. Amend. A. to save those powers.

In the second place it was contended that the trustees had an express power to partition under s. 28 (3), which, so far as material, reads :—

> "Where the net proceeds of sale have under the trusts affecting the same become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust) the trustees for sale may with the consent of the persons, if any, of full age, not being annuitants, interested in possession in the net rents and profits of the land until sale—
>
> "(*a*) partition the land remaining unsold or any part thereof; and
>
> "(*b*) provide (by way of mortgage or otherwise) for the payment of any equality money;
>
> and upon such partition being arranged the trustees for sale shall give effect thereto by conveying the land so partitioned in severalty . . . to persons of full age and either absolutely or on trust for sale or where any part of the land becomes settled land by a vesting deed or partly in one way and partly in another in accordance with the rights of the persons interested under the partition . . . .'

That section also was unavailing because the proceeds of sale had not become "absolutely vested," two fourths having been settled. It was argued that the settled shares were "absolutely vested" in the tenants for life within the meaning of the sub-section, but the learned judge rejected that argument.

Now, if the expression "absolutely vested" means "absolutely entitled," the sub-section does not appear to be of much use, as all the persons absolutely entitled to the proceeds of sale can of course call on the trustees to convey the property, either by way of partition or otherwise in any manner they please. The sub-section could, however, be applied where all the shares had become "absolutely vested," but one or more had been settled after the statutory trusts arose. But if any such settlement or settlements of a share or shares took effect before the statutory trusts arose, the sub-section would apparently fail of effect until under the trusts of such settlement or settlements the share or shares so settled became "absolutely vested" in some person or persons, and then, as I have pointed out, there would be no need for it.

Then the Court was asked to sanction the partition under s. 57 of the Trustee Act, 1925.

By that section where "any sale, lease, mortgage . . . or other transaction, is in the opinion of the court, expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees either generally or in any particular instance the necessary power for the purpose."

The power conferred on the court by that section of the Trustee Act is very wide. It was exercised in *Re Hope's Will Trust; Hope* v. *Thorp* [1929] 2 Ch. 136, where before 1926 a testator had purported to entail chattels, but settled no real estate on the same limitations, and Eve, J., held that the trustees had no power to sell the chattels, but as a sale was expedient he sanctioned a sale under that section.

In *Re Thomas*, the court, having decided that neither the power conferred by the will nor that contained in s. 28 (1) as amended, or (3) of the L.P.A. was exercisable, gave the necessary power under s. 57 of the Trustee Act, and so the parties got their partition after all.

Landlord and Tenant Notebook.

Increase of Rent of Part of Premises Let Separately as a Dwelling-house.

What appears to be an entirely new point under the Rent Restrictions Acts was recently decided by a Divisional Court in the case of *Harris* v. *Norris*, the question raised by that case being, whether, where the rent of a house as a whole had been properly increased by the service of a valid notice of increase of rent *quâ* the house as a whole, the landlord was entitled to recover such increase *quâ* a part of the house which had been let separately as a part of a dwelling-house.

It may be as well to set out briefly what were the material facts in the above case.

In August, 1914, the house in question had been split up into two separate parts for letting purposes, and each part had been let separately at a rental value of 8s. 6d. per week. Each of the parts therefore has a separate standard rent of 8s. 6d. Subsequently the tenant of one part took over the whole house, of which he therefore became the tenant at 17s. per week. Later, the landlord served this tenant with a notice of increase, the notice relating to the whole house. Subsequently the house was let to a new tenant, who sub-let one of the parts which had been let separately in August, 1914, the rent being a sum equivalent to the standard rent of 8s. 6d. plus half of the increase which had been made previously in respect of the whole house.

Now, under s. 3 (2) of the Increase of Rent and Mortgage Interest Restrictions Acts, 1920, a landlord cannot recover any increase of rent, unless he has, *inter alia*, previously served a valid notice of intention to increase the rent, as is required by that sub-section.

That sub-section, so far as material, provides that "where the rent of any dwelling-house to which this Act applies is increased, no such increase shall be due or recoverable until . . . after the landlord has served upon the tenant a valid notice in writing of his intention to increase the rent. . . . Where a notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant."

Now, if reference is made to s. 12 (2) of the same Act, it will be observed that the Act applies not only to a house, but also to a "part of a house let as a separate dwelling." For the purposes of the Act, therefore, the dwelling-house constituted by the whole of a house is an entity which is distinct and separate from any part of such house if let as a separate dwelling. Thus, for example, if a part of a house has been let separately in August, 1914, that part will have a standard rent of its own and recourse cannot be had to

apportionment as would be the case if the part in question had been let separately subsequently to that date.

It appears therefore that the Divisional Court in *Harris* v. *Norris*, *supra*, were right in treating the part as a separate dwelling-house, and as requiring a separate and distinct notice of increase in order to entitle the landlord to recover an increase of rent *quâ* such part, if separately let.

This might appear to be a strict view of the statute, but then the courts have always enforced those provisions of the Rent Acts strictly. One may refer, for example, to *Schmit* v. *Christy* [1922] 2 K.B. 60, where it was held that a notice of increase is necessary not only to increase the rent of a sitting tenant, but also to enable the landlord to recover the increase from a new tenant to whom the premises have been let at the very commencement of the tenancy at a rental which is greater than the standard rent, and which includes the increase in question. Such increase, the court held, cannot be recovered in such circumstances from the tenant during the continuance of the term granted to him, since the lease or tenancy agreement cannot be avoided (see *Fumasoli* v. *Comyn*, 132 L.T.R. 490) and since no notice of intention to increase the rent can take effect until after the determination of the term by reason of the express provisions of s. 3 (1) of the Act of 1920.

It is curious to note, however, that whereas for the above purposes a dwelling-house as a whole is regarded as a distinct entity from any of its parts if let separately, this principle has not been applied to de-control under the Rent and Mortgage Interest Restriction Act, 1923, since it has been held that where the whole of a dwelling-house has been de-controlled whether by reason of the landlord having entered into actual possession thereof in accordance with s. 2 (1), or whether by reason of the grant of a new lease to the sitting tenant in accordance with s. 2 (2) of the 1923 Rent Act, every part of the house is de-controlled, so that even if a part of the house was let separately thereafter, the Rent Acts would not apply (see *Lloyd* v. *Cook* [1929] 1 K.B. 103; and *Kingsley* v. *Adler* [1929] 1 K.B. 525).

Our County Court Letter.

DAMAGE TO HOUSE PROPERTY.

The above subject has been considered in two recent cases. In *Johnson* v. *Staton*, at Weston-super-Mare County Court, the plaintiff claimed £16 as damages for the defendant's negligence in failing to repair a chimney stack, which fell through the plaintiff's roof. The parties occupied adjoining houses, and the chimney stack served both, but four of the pots belonged to the defendant's house, and only one to the plaintiff's. The houses formed two of a continuous terrace, and there was another chimney stack between them, but this was the exclusive property of the defendant, as none of the pots served the plaintiff's flues. The terrace had been built for seventy or eighty years, and it was now impossible to ascertain the order in which the houses were built, but the plaintiff's case was that the wall was not a party wall, and his use of one pot did not make the chimney a party stack, hence it was the property of the defendant. The latter had been warned in 1921 that her chimney was too ruinous to repair, and in 1928, when some repairs were done to a chimney of the plaintiff's house, the defendant was advised that the heads of her chimneys were too big for their foundations. The defendant denied negligence, on the ground that her chimneys had been examined every year since 1925, and repairs had been carried out after a storm in 1928, when the chimney was overhauled and found to be in good condition. It was further contended that there was no crack in the chimney, but the storm of November, 1929, was the worst in thirty-five years, and had been so abnormal as to constitute an act of God. His Honour Judge Parsons, K.C., held that the defendant was to blame, as she knew there was a dangerous chimney on her roof. The type was radically bad in design and form, and it was unfortunate for the owners that all the chimneys in the terrace were the same. Judgment was therefore given for the plaintiff for the agreed damages, as claimed, with costs.

The limitations of the defence of act of God were explained in *Nitro-Phosphate and Odam's Chemical Manure Co.* v. *London and St. Katharines Dock Co.* (1878), 9 Ch. D. 519. Mr. Justice Fry (as he then was) there stated that a defendant cannot avail himself of the act of God as an excuse when he had not done his own duty, unless he can make it apparent to the court that, if he had done his duty, damage would still have followed to the plaintiff.

An ostensible action for damage may sometimes be the means of deciding a boundary dispute, as in the recent case of *Ridley* v. *Morris*, at Bromsgrove County Court. The plaintiff claimed to have suffered damage to the extent of £275, but £180 had been abandoned, and the amount claimed was £99, viz., £95 for damage to oil paintings, and £4 for damage to the roof of a studio. The latter was built of wood, with a rubberoid roof and joints of mastic, and in 1925 (the date of its erection) the plaintiff had given the defendant a 9-foot post for his clothes line. The latter, however, had subsequently been attached to a hook, which was screwed into the wall of the plaintiff's studio, and the vibration of beating carpets on the clothes line had caused the skylight and walls to leak, so that the pictures and carpet were spoiled by damp. The defendant's case was that there had originally been a 7-foot party fence, the posts being on his side, and the erection of the studio had been conditional on its not exceeding the fence in height, but during his absence the plaintiff had erected a large shed. This encroached two or three inches upon the defendant's land, and, as the post given him by the plaintiff was unsightly, the defendant preferred to screw the hook into the studio wall. It was pointed out that the mere beating of mats caused no vibration, and that the plaintiff had omitted to renew the rubberoid periodically as required. His Honour Judge Roope Reeve, K.C., held that the concrete base of the studio was wholly on the plaintiff's land, and that the claim for relief was exaggerated. The valuable pictures should not have been stored in the studio, which was at an altitude of 900 feet and exposed to gales from the Bristol Channel, whereby the damage had been caused. The claim for an injunction and damages therefore failed, but a declaration was made that (1) the studio was only on the plaintiff's land, (2) the defendant's hook and line constituted a trespass. Liberty was given to apply, and no order was made as to costs.

Practice Notes.

THE CALCULATION OF DOCK DUES.

The measurement of a ship's tonnage for the above purpose was considered in the recent case of *Kassos Steam Navigation Company Limited* v. *The Great Western Railway Company* at Cardiff County Court. The plaintiffs claimed £5 1s. 6d., being the amount overcharged by the defendants in respect of the s.s. "Chelatross," on entering Barry Dock. The tonnage on Board of Trade figures was 370.26, but the defendants had charged dues on 454, i.e., an excess of 84 tons, at 1s. 2½d. per ton. The plaintiffs' case was that under the Merchant Shipping Act, 1894, s. 85 (3), the tonnage could only be ascertained by an officer of the Board of Trade or Customs, and they relied upon the certificate of the preventive officer at Barry. The defendants contended that this was not conclusive, but that the court might reject the measurements, if they were not made in accordance with the Act, and evidence of the defendants' own measurements was given by the dockmaster. His Honour Judge L. C.

Thomas, in a reserved judgment, observed that the registered capacity of Greek ships (such as the plaintiffs' vessel) only included spaces below deck, but s. 85 (1) showed that dues were payable on goods shipped above the main deck. The measurements had been taken as required by the Act, and were taken honestly by a competent officer, although not in strict compliance with the Second Schedule, r. 1 (5), of the Act. The defendants had made their calculation upon the stowage principle, and, although the court was not concerned with the respective merits of the two systems, the issue raised was whether the responsible officer had properly followed the method prescribed by the Act. His Honour held that this had been done, and a *primâ facie* case was therefore made out, which had not been satisfactorily answered by propounding a different method. The defendants were therefore only entitled to dues upon the figure put forward by the proper officer, viz. 370.26 tons, and, as there had been an excess payment, the plaintiffs were entitled to judgment with costs. The learned county court judge pointed out that an amendment of the Act would be required in order to bring the defendants' system into vogue.

JURY ACTIONS AND COSTS.

Under "Practice Notes" in our issue of December 21st last (73 Sol. J. 847), we drew attention to the fact that the Rules of the Supreme Court (No. 3), 1929, were published too late for their inclusion in the yearly practice publications for 1930. Order LXV, r. 1, of the Rules of the Supreme Court, which deals with the question of costs, still appears in many publications containing the following words "Where any action, cause, matter or issue is tried with a jury, the costs shall follow the event, unless the Judge . . . or the Court, shall for good cause, otherwise order." It is not yet as widely known as might be desirable, however, that the above passage is no longer effective, and that the effect of the above-mentioned Rules is that r. 1 of Ord. LXV shall be amended by the omission of the above paragraph. The position in this respect was recently pointed out by Mr. du Parcq, K.C., when his client, as plaintiff, having succeeded in the case of *Sohr* v. *Bolivia Concessions Limited* (so far as the case dealt with wrongful dismissal of Mr. Sohr) indicated that in substance the effect of the omission from the rule was to leave the question of costs to the judge. Mr. Justice McCardie expressed his surprise that there had been no more public announcement of so important a change of procedure, and Mr. du Parcq suggested that the alteration had probably been made just a little too late to be incorporated in the 1930 edition of the Annual Practice Book. It is, of course, unnecessary to stress the importance of being aware of this vital change to which solicitors will be wise to draw counsel's attention in future in all jury cases, for the costs no longer follow the event, but are in the discretion of the judge.

Obituary.

Mr. E. BEAUMONT.

Mr. Edward Beaumont, who was well known in Lincoln's Inn and the Chancery Courts, died in London, on Monday last. The second son of Mr. James Beaumont, a London solicitor, he was born in 1845, educated at Highgate School and at St. John's College, Cambridge, and was called to the Bar by Lincoln's Inn in 1870, and subsequently elected a Bencher. He soon acquired an extensive practice, and has for a long time been recognised as a most capable equity lawyer and conveyancer. His numerous pupils included Lord Buckmaster, Mr. Justice Romer, Lord Finlay, Sir Harold Morris, K.C., Mr. Colam, K.C., Sir Edward Chamier, Sir E. Bonham-Carter and Lord Cushendun. He was appointed Junior Counsel to the Attorney-General in charity matters. Had he taken silk it is quite possible it would have led to a seat on the Bench, but he certainly had a very high reputation at the Bar. He was a prominent Mason and a member of the Court of the Cutlers' Company. His death will be a personal loss to all those with whom he became associated.

Col. H. A. R. MAY., C.B.

Colonel Henry Allan Roughton May, C.B., V.D., solicitor, whose death occurred at his Fortis Green home recently, was buried with military honours at St. Pancras Cemetery. Colonel May joined the 28th Battalion London Regiment (Artists' Rifles) in 1882, as a private. He commanded the First Battalion at the outbreak of the war, and after serving in various capacities in this country, he went to France in October, 1914, undertaking important duties at G.H.Q. He was gassed and invalided home in 1915, and in 1916 was made commandant of a school of instruction at Tidworth, where he served until the end of the war. He had completed forty years' service in the Artists' Rifles when he retired in 1921. Admitted in 1885, he joined the firm of Minet, Harvie and Smith in 1891, and was for many years up to the time of his death the senior partner.

Mr. G. H. BOYCE.

Mr. Godfrey Hale Boyce, solicitor, senior member of the firm of Boyce, Evans & Sheppard, of 14, Stratford-place, W.1, died in a nursing home following an operation on Thursday, the 17th ult., aged sixty-four years.

Mr. Boyce was educated at Sherborne School, and after serving his articles with Messrs. Paines, Blythe & Huxtable, was admitted in 1888. In 1894 he joined his father's firm (Boyce & Son), who then practised at 28, Brook-street, W.1, and subsequently at 8, George-street, Hanover-square. On his father's death he continued the practice as sole partner, but was joined in partnership by Mr. Dudley Evans in June, 1911, when the firm-name became Boyce & Evans. The practice was continued at that address until 1913, when it was transferred to 14, Stratford-place, W.1. In 1928 they took into partnership Mr. S. M. W. Sheppard, the style being altered to Boyce, Evans & Sheppard. The practice will be continued under that name at 14, Stratford-place, W.1, by the surviving partners, Mr. Dudley Evans and Mr. Sheppard.

H.

Reviews.

The Law of Banking. Sir John Paget, Bart., K.C., Hon. Fellow Institute of Bankers. 1930. Fourth edition. London: Butterworth & Co. (Publishers), Ltd. 17s. 6d. net.

It is unnecessary to point out how important banking is—not merely to those engaged in business and commerce, but also to the ordinary individual. And the law relating to banking is correspondingly important, and a knowledge of it indispensable, not merely to the specialist lawyer, but also to the average practising barrister or solicitor, who has to possess a general knowledge of most subjects.

For these reasons the new "Paget" is welcome. The last edition appeared in 1922, and since then much water has flowed under the legal bridges. The Law of Property Acts and the new Companies' Act have been passed, and a number of cases of the utmost importance to banking have been decided such as *Tournier* v. *National Provincial Bank* [1924] 1 K.B. 461; *Underwood* v. *Bank of Liverpool* [1924] 1 K.B. 775, and *Jones* v. *Waring and Gillow* [1926] A.C. 670—to mention only one or two. There has therefore been much new material for the learned author to deal with, and he has done so in this usual interesting and instructive way. The subject is a difficult one, and the book not light reading, but the practitioner—and of course the student—who wants to have the leading cases explained to him in a thorough and a practical way by one of the greatest living authorities on banking law will find what he wants in the new "Paget."

Correspondence.

Re Forster: Somerville *v.* Oldham.

Sir,—May I suggest that the grounds for the decision in the above case would have been somewhat more clearly elucidated if in your learned contributor's article under the heading of "A Conveyancer's Diary" two words had been italicised. Paragraph 3 of pt. II of 1st Sched., L.P.A., 1925, refers to a state of things immediately *after* the commencement of the Act, whilst para. 1 of pt. IV applies to a state of things immediately *before* such commencement. The wife being the settlor and having merely covenanted to assure the property to trustees, the legal estate obviously remained in her ill her death, and on that event automatically vested (as a trust estate) in her executors subject to being divested if they had renounced (which it will be remembered they did not do, but postponed taking probate till after the L.P.A. came into force). It appears obvious that between the husband's re-marriage in 1923 and the 31st December, 1925, the two daughters, to whom the property had been appointed, would have been the persons who could have called for a conveyance of the legal estate (the trustees could hardly have claimed the estate for the purpose of being bare trustees), and it could therefore only be by reason of the new law prohibiting legal estates in undivided shares that the trustees could have had any ground of claim at all.

I should much like to hear your learned contributor's opinion as to what would have been the position if in 1926 the wife's executors instead of proving her will had renounced probate (*a*) before 1926, (*b*) in 1926, and a grant of administration with the will had been made in 1926.

Norwich. ERNEST I. WATSON.
8th April.

[This is the letter referred to in "A Conveyancer's Diary" of last week and inadvertently omitted from that issue. —ED., *Sol. J.*]

The Rules of the Supreme Court.

Sir,—To the layman it may seem strange that the way of approach to the High Court is fenced about with that enormous bulk of regulations which are known to the profession as the Rules of the Supreme Court; and to at least one lawyer it appears to be a most unfortunate circumstance that there are frequently such difficulties, and also so many technicalities, which arise in connexion with points of practice. Certainly there have been improvements, but there is no getting away from the fact that the avenues of approach are not the wide, easy and smooth ways which they ought to be, but more frequently resemble something in the nature of an obstacle race, or may almost be compared with the Aintree course.

This is neither the time nor the place to deal generally with this question, for it is one of much width and difficulty, which needs the closest investigation; though it seems perfectly appropriate to generalise here to the extent of saying that the Rules need a thorough and drastic overhaul and extensive pruning. There is, however, a minor grievance which could, one feels, easily be remedied. It is apparently impossible to obtain a print of all the Rules of the Supreme Court bound up together. It is, of course, in no sense derogatory to the monumental works which give us so much useful information in their voluminous notes on each order and rule, to say that it is not always easy, in them, to see the wood for the trees, and there are occasions when it would be advantageous to the practitioner to have an order set out so that it would be possible to read straight through it, rule by rule, so as to absorb its general scheme. Is it too much to hope that we may shortly be furnished with the Rules separately, without a single note or observation thereon?

Lincoln's Inn, W.C. "A SUBSCRIBER."
15th April.

Finance Act, 1927, s. 55.

Sir,—This section provides substantial relief from capital and transfer stamp duty upon the sale of the undertaking of an existing company to a new company for purposes of reconstruction, but the relief is only claimable if the consideration payable by the new company for the undertaking of the existing company consists as to not less than 90 per cent. in *the issue of shares* in the new company to the shareholders of the existing company.

It has come to our knowledge that the Inland Revenue authorities now take the view that the *allotment* of the shares to the shareholders of the existing company is not an *issue* of shares to the shareholders within the meaning of the section, and that, in order to obtain the relief, the names of such shareholders must actually be entered in the register of members of the new company in respect of the shares so allotted.

We are advised that this view of the Inland Revenue authorities is not well founded.

We have in mind a particular case—that of an existing company which sold its undertaking to a new company for fully-paid shares, the latter being allotted to the shareholders of the existing company in the ordinary way. Following the usual practice, some of the shareholders renounced their right to their allotments and their renouncees were the first names to be entered on the register of members of the new company. The Inland Revenue authorities contend that as the actual shareholders of the old company were not entered upon the register of members of the new company, no relief is claimable under s. 55 of the Act.

This contention—if it be correct—will either prevent the new company from claiming the valuable reliefs afforded by the section, or will preclude the shareholders renouncing their rights to their allotments for a short interval after allotment—a valuable privilege which for some years past has been recognised by the London Stock Exchange and has become sanctioned by usage.

We shall be interested to know whether any of your professional readers have met with a similar case, and, if so, we shall be glad if they would communicate with us C/o Box No. 700, THE SOLICITORS' JOURNAL.

26th April. CITY SOLICITORS.

Insurance Notes: Depreciation of Investments.

Sir,—Would you kindly put me in a position to obtain particulars of the scheme for insurance in regard to depreciation of investments referred to in THE SOLICITORS' JOURNAL under the above heading on 29th March last, at p. 197?

London, S.W.1. "LEGAL."
17th April.

Sir,—In your issue of the 29th March there is a reference to a Scottish office which is issuing policies to cover depreciation of investments. I shall be grateful if you will let me know the name of this Company.

Birmingham. "SUBSCRIBER."
24th April.

UNIVERSITY OF LONDON FACULTY OF LAWS. RHODES LECTURES.

A course of three public lectures on "The Legal and Political Unity of the Empire" will be delivered by Mr. J. H. Morgan, K.C. (Professor of Constitutional Law in the University of London, Reader in Constitutional Law to the Inns of Court, British Member of the Académie Diplomatique Internationale), at University College, on Fridays, 9th, 16th and 23rd May, at 5.30 p.m. The chair on May 9th will be taken by The Lord High Chancellor (The Rt. Hon. Lord Sankey, G.B.E.); on 16th May by The Rt. Hon. Lord Atkin of Aberdovey; and on 23rd May by The Rt. Hon. Lord Craigmyle of Craigmyle. The lectures are open to the public without fee. Tickets for reserved seats may be obtained on application to C. O. G. Douie, Secretary, University College, London, Gower Street, W.C.1.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Assignment of Lease by Official Receiver.

Q. 1895. The lessee of a lease, expiring at Christmas, 1931, has been adjudicated bankrupt. The lease contained the usual proviso for determination on bankruptcy. The official receiver as trustee of the bankrupt's estate, has now assigned the residue of the lease which is vested in him. The lessor wishes to make his own arrangements as to the premises comprised in the lease, and has not given his consent to the assignment (assigning without consent is prohibited by the terms of the lease), but has received notice thereof from the official receiver's assignee. Section 146 (10) of the L.P.A. 1925, has been referred to, but the section does not appear clear—

(1) Can the landlord take any steps successfully to recover possession of the premises (*a*) forthwith; (*b*) after the expiration of a year from the bankruptcy?

(2) If not, and the landlord grants a lease to a tenant commencing 25th day of December, 1931, can the official receiver's assignee make any claim against the landlord for a new lease or otherwise under the L.T.A., 1927, on the 25th day of December, 1931, when the present lease expires?

The premises are let as business premises.

A. The operation of the L.P.A., 1925, s. 146 (10), was explained by Mr. Justice Russell (as he then was) in *Civil Service Co-operative Society* v. *McGrigor's Trustee* [1923] 2 Ch., at pp. 354 and 355. On the facts stated in the question—

(1) The landlord is unable to take any steps successfully to recover possession, either (*a*) forthwith, or (*b*) after the expiration of a year. He is certainly entitled to serve a notice under s. 146 (1), but, as the property has been sold (apparently within a year from the bankruptcy), the title can be confirmed by an order of the court, granting relief against the forfeiture.

(2) A bankruptcy on the title is no bar to a claim under the L.T.A., 1927, and the official receiver's assignee can make a claim against the landlord for compensation, provided the conditions of the L.T.A., 1927, s. 4, are fulfilled. The assignee cannot claim a new lease in the first instance, but the landlord is entitled to offer a renewal of the tenancy, under s. 4 (1) (*b*), in answer to the claim for compensation. It is difficult to see, however, how any goodwill can be attached to the premises, so as to enhance the rent, between the present date and Christmas, 1931. The inference from the bankruptcy is that no goodwill exists, and the assignee has probably obtained the premises at a lower (and not a higher) rent. The possibility of a claim under the L.T.A., 1927, is therefore, remote.

Stranger's Liability for Workmen's Compensation.

Q. 1896. X and Y were both killed in a motor accident. It can be assumed that the accident was caused through the negligence of Y. So far as X (who was a motor driver) was concerned, the accident arose out of and in the course of his employment, so as to entitle his dependents to compensation under the Workmen's Compensation Act. The insurers of X's employers admit their liability under the Workmen's Compensation Act, but are desirous of enforcing their indemnity against the estate of Y under s. 30 (*a*) of the Workmen's Compensation Act, 1925. Representation has not been taken out either to the estate of X or the estate of Y. Although the insurance company have admitted liability, it is proposed that the widow of X should commence arbitration proceedings under the Workmen's Compensation Act, and that notice should be served upon the representatives of Y, claiming indemnity under r. 25 (1) of the Workmen's Compensation Rules, 1926. Y, at the time of the accident, was employed as an agent for an insurance company with which insurance company he was insured in respect of a motor cycle which he was driving at the time of the accident. It will be seen, therefore, that there is a possible claim against this insurance company direct in respect of the negligence of their agent. Assuming that an award is made in favour of the widow of X in the proposed arbitration proceedings, the question arises as to whom the insurers of X's employers should sue for the enforcement of their indemnity against the estate of Y in view of the fact that representation has not been taken out. It is of course clear that they can sue Y's insurance company direct on the ground that they are responsible as Y's employers, but our difficulty arises in respect of the claim for indemnity against Y's estate which, if established, will be met by the insurers of Y, but against whom there is no direct right of action.

A. The question as to representation to Y's estate does not arise, as his personal representatives would have a good defence to a claim for indemnity under the maxim *actio personalis moritur cum persona*. Section 30 (1), *supra*, does not create any liability which did not previously exist, and the above defence is therefore available to Y's representatives, as the facts are not within the Civil Procedure Act, 1833, s. 2. The defence is not available to the employers of Y, however, and they remain liable for the negligence of their servant. They may therefore be served with notice of a claim to indemnify under r. 25 (1), *supra*, by the employers of X, and may be sued direct by the widow of X under Lord Campbell's Act. The widow of X may proceed concurrently against (*a*) the employers of X for compensation, and (*b*) the employers of Y for damages, but, under s. 30 (1) *supra*, she is not entitled to recover both damages and compensation. The employers of Y would, therefore, be entitled to judgment on the claim for damages, if it transpired that the Plaintiff had recovered compensation from the employers of X. The employers of Y would still be liable to indemnify the employers of X, unless they were able to establish a defence (such as contributory negligence) which would have been available against X if he had survived. See *Cutsforth* v. *Johnson* (1913), 108 L.T. 138.

Annuity—Cesser—Estate Duty.

Q. 1897. A testatrix who died in 1923 by her will charged upon two freehold houses "An annuity, free of legacy and death duties, of £25 to be paid half-yearly in equal amounts upon the joint lives of A.B. and C.D. (husband and wife) for the term of their natural lives." Legacy duty was paid on the testatrix's death upon the value of the annuity, held on the longest of the two lives, calculated in accordance with Tables 1 and 2 of the Succession Duty Act, 1853. A.B. (the husband) has now died and the Estate Duty Office have claimed from the trustees of the testatrix's will estate duty on the actuarial value of the moiety of the annuity passing to the survivor for life. The trustees contended that the annuity being on the joint lives no portion passes, but offered to pay duty on the value of one moiety on the Estate Duty Office agreeing that on the survivor's death further duty will be payable upon the remaining moiety only. To this a reply has been given that the death of the survivor will give rise to a claim for estate duty under s. 2 (1) (*b*) of the Finance Act, 1894, the capital liable to duty being ascertained in accordance with s. 7 (7) (*b*) of the Act. Is duty now payable upon the

moiety of the fund? Will duty be payable upon a moiety or the whole of the fund upon the death of the survivor?

A. We express the opinion that estate duty is now payable upon the moiety of the fund and will be payable upon the whole thereof upon the death of C.D. C.D.'s interest is enhanced (to the extent of a moiety of the annuity) by the death of her husband, and upon her death those interested in the freehold will benefit by the cesser of the whole annuity.

Mortgagee's Notice to Quit Agricultural Holding.

Q. 1898. A mortgagee under a mortgage dated the 14th August, 1929, has entered into possession by giving the tenant (who is tenant of an agricultural holding) notice to pay the rents to him. He is now wishful to give the tenant the necessary year's notice under the Agricultural Holdings Act, 1923, terminating his tenancy in order that he may sell the property with vacant possession.

(1) Should the mortgagee in possession simply give the tenant a usual notice to quit?

(2) Is it necessary to notify the mortgagor of or to obtain his concurrence to the notice to quit?

A. The question does not state the nature of the tenancy, nor whether the latter is not binding on the mortgagee, so as to bring the facts within the Agricultural Holdings Act, 1923, s. 15 (2). The same Act, s. 26 (1), may also prevent the mortgagee from achieving his object of selling the property with vacant possession, in pursuance of a notice given at this stage. The latter section provides that on the making of any contract for sale of a holding held by a tenant from year to year any current notice to quit shall be void, unless the tenant agrees in writing that it shall be valid. Subject to the foregoing, the above questions are answered as follows: (1) Yes; (2) No.

Highway—Footpath by side of Carriageway—Right to reduce width of.

Q. 1899. Our client owns some property adjoining a road which is under the jurisdiction of the L. County Council. This county council has widened the road until it is now 18 feet wide. Prior to the widening of the road the footpath which ran along our client's property was 4 feet wide. Our client's property is bounded by a 9-inch brick wall for a considerable portion of the way, and by a hedge with a ditch on the roadside for the rest of the way. The 4-foot pathway is measured from the foot of the wall and from the centre of the hedge-row respectively. In order to complete the road widening the county council have encroached 2 feet on the footpath, with the result that a considerable portion of the footpath which adjoins our client's property is now only 2 feet wide, and this is so at the entrance to our client's property, which entrance is 14 feet wide. Our client conducts a farming business, and from the entrance in question his carts are constantly emerging. The sweep of the road is such that traffic tends to come very close to the kerb, the result being that vehicles with high loads brush perilously close to the boundary wall and damage is from time to time done to the property. To have a public carriageway within 2 feet of one's entrance is of itself a danger, but the matter is considerably aggravated by the damage done by passing vehicles. The footpath in question is an ancient country footpath which had a well-defined kerb line prior to the widening. The inhabitants have complained and by way of compensation the surveyor for the county council has made a wider footpath on the other side of the road. This does not remedy our client's grievance, nor does it completely remedy the public grievance. Information is desired as to the legal position in this matter. What remedy is available (*a*) to our client in respect of the private inconvenience that he suffers, and (*b*) the inhabitants in respect of their complaint?

A. It is not stated when or how this narrow road came under the jurisdiction of the county council—possibly under the Local Government Act, 1929. It is assumed it is in a rural area. We know of no provision dealing with the width of a footpath except s. 80 of the Highway Act, 1835, which prescribes 3 feet as the minimum. It is important, however, if possible, to ascertain how the footpath came to be made. It may have been prescribed under an inclosure award or the road may have been dedicated by the owner of the adjoining land, and in this case the evidence may show that the 4-foot strip was originally dedicated as a footpath only, and if a footpath was prescribed by the award or dedicated as such the highway authority should not, it is considered, in the absence of statutory authority, turn part of it into a carriageway (see note to s. 82 of Highway Act, 1835, in Pratt & Mackensie's "Highways"). It would seem that the client, having a special interest in the matter, may properly bring an action for a declaration and injunction (see *Webster* v. *Bakewell R.C. No.* 2 [1917] 86 L.J. Ch. 89). If, however, there is no such evidence of the origin of the footpath the matter would appear to be in the discretion of the council as successors both to the surveyor and the vestry (see Highway Act, 1835, ss. 24 and 80, and Local Government Act, 1894, ss. 144 to 148); and if so, it would seem that there is no private remedy for non-compliance with s. 80 (as to width of footpath) any more than there is for non-repair. The provisions of the Public Authorities Protection Act, 1893, should not be overlooked.

Club Profit on Intoxicants.

Q. 1900. A proprietary club, the proprietors of which are a limited company, wishes to sell intoxicating liquors and tobacco to the club members and to make a profit thereon. Section 95 of the Licensing Consolidation Act, 1910, in effect, provides that the supply of intoxicating liquor must be under the control of the members or the committee of the club. If this is so, can the committee make a profit on the sale of intoxicating liquors and tobacco and hand the profit over to the proprietors? We have referred to vol. 3, "Encyclopædia Forms and Precedents," p. 559, which seems to indicate that the wine committee shall not be allowed to make any profit. What should be done in the matter in order that the proprietary company may receive profits on the sale of liquors and tobacco? Would it be better to form an independent members' refreshment club to rent from the proprietary company that portion of the company's premises whereon liquors are supplied and to make it a condition that every member of the proprietary club shall also be required to join the refreshment club?

A. The Licensing (Consolidation) Act, 1910, s. 95 (*h*), does not of itself disentitle the committee to make a profit and hand the same over to the proprietor, but the latter circumstance may make it difficult to persuade the magistrates that the supply of intoxicants is under the control of the members or the committee. The existence of any loan from the proprietors to the club (even if the latter be not "tied" by express agreement) is strong evidence that the committee or members have not the control, as required by the sub-section. The above form in the "Encyclopædia" is apparently framed to secure a supply to the members at cost price, and is not based on any statutory disability of the committee as regards making a profit. The proposed formation of an independent refreshment club, membership of which is conditional upon joining the proprietary club, will not affect the question of fact as to control. There is no objection to an arrangement for the proprietors to take the profits, as these may be accepted in consideration of a reduced rent. The latter must not be reduced to a nominal figure, however, as this would give rise to a moral obligation to purchase the intoxicants from the proprietors in the first instance, and so take away the control from the committee. The question is silent on the last point (viz., purchases from the proprietors), to which great importance is attached by the courts, in deciding who has the control.

Notes of Cases.

Privy Council.

The Performing Right Society *v.* Bray District Council.

10th April.

APPEAL—JURISDICTION OF BOARD—COPYRIGHT ACT, 1911—INFRINGEMENT—COPYRIGHT PRESERVATION ACT, 1929, s. 4.

This was an appeal from the Supreme Court of the Irish Free State and raised important constitutional and other questions. The Supreme Court had reversed the decision of Johnston, J., who had held that the Copyright Act, 1911, was in force in the Irish Free State on 11th August, 1926, and that the appellant society were therefore entitled to an injunction restraining the respondent council from infringing the appellants' copyright by performing in public the two musical works "Venus on Earth" and "Lilac Time." If the Copyright Act, 1911, applied to the Irish Free State on 11th August, 1926, and if the judgment fell to be framed in accordance with the rights of the parties as they existed at the date of the suit, then the appellants would be entitled to succeed on the appeal. The respondents contended (1) that the board had no jurisdiction to hear the appeal, (2) that the Copyright Act, 1911, was not in force in Ireland after 5th December, 1922, or at any rate only to a limited extent, (3) that by s. 174 of the Industrial and Commercial Property (Protection) Act, 1927, the Copyright Act, 1911, was in fact repealed with no saving of the appellants' rights, and (4) that by the Copyright (Preservation) Act, 1929, the Board was prevented from giving any remedy in respect of past infringements by reason of s. 4 of that Act.

THE LORD CHANCELLOR said, in their lordships' opinion, on the question of fact whether the respondents had committed a breach of the Act of 1911 the appellants had made out their claim to an injunction. With regard to jurisdiction he referred to Art. 66 of the Irish Free State Constitution, which provided that nothing should impair the right to appeal, and accordingly the provision specifically ensured that the right to petition for leave to appeal should subsist by stipulating that nothing should impair it. With regard to the contention that the Copyright Act, 1911, had been in fact repealed, the right view to take was that all laws in force before 6th December, 1922, remained in force except so far as inconsistent with the constitution. With regard to past infringements and s. 4 of the Copyright (Preservation) Act, 1929, it remained to determine the advice which might properly be tendered to His Majesty. The proper course was to discharge the order of the Supreme Court appealed from in so far as it directed payment of costs but not further or otherwise, and their lordships would humbly advise His Majesty accordingly. Much of the hearing before the Board was taken up with an argument by the respondents on questions of fact in the course of which they set up a case which was not in itself even tenable. In those circumstances there would be no order as to the costs of this appeal.

Lords BLANESBURGH, HANWORTH, THANKERTON and RUSSELL OF KILLOWEN concurred.

COUNSEL: *Stuart Bevan*, K.C., and *Hon. S. O. Henn Collins; T. S. F. Battersby*, K.C., *A. A. Dickie*, K.C., and *C. S. Campbell*.

SOLICITORS: *Syrett & Sons; Burchells*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Appeal.

Blay *v.* Pollard and Morris.

Scrutton, Greer and Slesser, L.JJ. 28th March.

CONTRACT—WRITTEN DOCUMENT—UNILATERAL MISTAKE—DOCUMENT SIGNED BY DEFENDANT—*Non est factum*—NO MISREPRESENTATION—SOME OF THE BENEFITS OF THE CONTRACT TAKEN—RECTIFICATION—GROUND NOT PLEADED.

Appeal from a judgment of Mackinnon, J.

The plaintiff brought an action against the two defendants, Pollard and Morris, claiming arrears of rent. In 1927 the two defendants entered into a partnership to carry on business as garage proprietors, and carried on business as such for some time in the premises let to them by the plaintiff. On 4th March, 1929, the defendants Pollard and Morris orally agreed to dissolve partnership on the terms that the defendant Morris should take over all liabilities as from 4th March, 1929. An agreement in writing was prepared by the defendant, Pollard's father, who was a solicitor. By the terms of that agreement the defendant Morris was liable to indemnify Pollard for all arrears of rent. The defendant Morris was asked to read that document, and Morris, who was unversed in business, looked through the document, and although he said he could not understand it, he signed it on 20th April, 1929. The plaintiff, having obtained judgment against the two defendants, the defendant Pollard served a notice on the defendant Morris claiming to be indemnified by him against the plaintiff's claim under the document of 20th April, 1929. On behalf of the defendant Morris, it was pleaded that the document of 20th April, 1929, was drawn up and signed under a mutual mistake of fact; that it was signed under the belief that it embodied the oral agreement of 4th March, 1929; and that Morris agreed to indemnify Pollard only to the extent agreed on orally, namely, as from 4th March, 1929.

Mackinnon, J., found that on 4th March, 1929, the parties orally agreed that Morris should assume liability as from that date only, and that there was no agreement between them that Morris should assume liability for rent due and unpaid on 4th March. The judge rectified the written contract of 20th April, so as to make it conform to the oral agreement of 4th March. The defendant Pollard appealed.

THE COURT allowed the appeal. It was said that the contract was not Morris's contract *non est factum*. But Morris had signed the document knowing that it dealt with the dissolution of the partnership, and he took the benefit of some of the terms contained in the document. He could not be allowed to escape from the legal effect of a document he had signed after reading it, in the absence of misrepresentation by the other party. The plea of unilateral mistake in one party also failed. No fraud was alleged in the pleadings and no application to amend was made. Rectification was not claimed in the pleadings and mutual mistake was not pleaded, nor was there any evidence to support such a plea. The judge was not entitled to decide the case on issues which were not on the record, either originally on the pleadings or placed on the record by amendment. Appeal allowed.

COUNSEL: *Hon. S. O. Henn Collins; Tristram Beresford*.

SOLICITORS: *Sydney R. Pollard; John B. de Fonblanque*.

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Evans *v.* Baxter and Another. 5th March.

Scrutton and Slesser, L.JJ. (Sitting as King's Bench Division Judges.)

LANDLORD AND TENANT—RENT RESTRICTION—OWNER RATED—INCREASE OF RENT—OWNER'S COMPOUNDING ALLOWANCE NOT TO BE INCLUDED—INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920 (10 & 11 Geo. 5, c. 17), s. 2 (1) (*b*).

Appeal from a decision given at the Kingston-upon-Hull County Court.

The plaintiff was the owner and the defendants were the tenants of 67, Huntington Street, Hull, which was a dwelling-house protected by the Rent Restrictions Act of 1920. The standard rent of the house was 5s. 6d. a week. The property came within the conditions in which the rating authority of Hull directed that the owner should be rated instead of the occupier, and the compounding allowance was fixed at 15 per cent. The plaintiff, who had obtained the benefit of

that allowance, added to the standard rent an increase computed on her total assessment for the time being, and contended that that was the amount for the time being payable by the landlord under s. 2 (1) (*b*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. The defendant tenants contended that the only increase permissible was that computed on the full assessment for rates, less the 15 per cent. allowance. The plaintiff claimed to recover 11s. 11d. as arrears of rent, being 5½d. a week from the 8th April, 1929, to the 30th October, 1929. The county court judge held that the plaintiff could only increase the rent by the amount of the assessment less the allowance. The plaintiff now appealed.

SCRUTTON, L.J., said that the court was bound by the decision in *Nicholson* v. *Jackson* (65 SOL. J. 713; 37 T.L.R. 887), in which it was held that the net amount and not the gross amount was deemed to have been paid, and which was, therefore, the amount to be added when the landlord increased the rent to cover the increase of rates. The appeal was dismissed.

SLESSER, L.J., concurred.

COUNSEL: *H. A. Hill* and *A. W. Nicholls*, for the appellant; *W. H. Owen*, for the respondents.

SOLICITORS: *Few & Co.*; *Judge & Priestly*, for *J. Charlesworth*, Hull.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Wilkins *v.* The Carlton Shoe Co., Ltd.

Lord Hewart, C.J. 7th April.

LANDLORD AND TENANT—STATUTORY TENANT—DECLARATION OF TRUST FOR ANOTHER—CLAIM FOR POSSESSION BY LANDLORD—DETERMINATION OF STATUTORY TENANCY.

This was an action for possession of a dwelling-house and shop at 26, Castle-street Bristol, and was heard by Lord HEWART, C.J., at the Bristol Assizes. Following upon the determination of a prior tenancy agreement Charles Lewis, trading as the Carlton Shoe Company, held the above premises from the 25th March, 1922, as a statutory tenant under the Rent Restriction Acts from the Corporation of Bristol. By an agreement dated the 27th April, 1922, between the corporation and the plaintiff the corporation agreed to let the premises to the plaintiff for a term of seventy-five years from the 25th March, 1922, at a certain rent and on certain conditions. On the 13th March, 1928, the defendants, the Carlton Shoe Co. Limited, was registered and acquired the business and assets, including the benefit of the tenancy of the premises at Castle street, Bristol, of the Carlton Shoe Company, carried on by Lewis. The tenancy of the premises was sold to the defendant company by Lewis, subject to the rents and covenants contained in the agreement of tenancy under which Lewis held it, and it was provided that possession should be given to the company as far as possible, and that Lewis should endeavour to obtain all necessary consents to the assignment or transfer of the premises. Lewis did not apply to the plaintiff for his consent to an assignment, but, by a declaration of trust, dated the 7th May, 1928, declared that he held the premises at 26, Castle-street, the tenancy whereof was vested in him as a statutory tenant, in trust for the company. On the execution of that trust the company was put in possession of the premises, and had since carried on business there. The plaintiff now claimed possession of the premises.

Lord HEWART, C.J., said that according to the principles laid down in *Keeves* v. *Dean*, 68 SOL. J. 321; [1924] 1 K.B. 685, the effect of putting the company into possession in pursuance of the contract of sale was to determine Lewis's statutory tenancy, and no right of possession as against the plaintiff passed to the company. It was contended on behalf of the defendant company that the company was a mere licensee of Lewis, and that his statutory tenancy continued, but he (his lordship) was unable to take that view. Lewis completely parted with possession in pursuance of the contract of sale.

COUNSEL: *E. H. C. Wethered*, for the plaintiff; *F. W. Beney* and *L. R. Dunne*, for the defendants.

SOLICITORS: *Hatchett-Jones & Co.*, for *Bolton & Davidson*, Bristol; *Peachey & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Societies.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall on Tuesday, the 29th ult. (Chairman, Miss D. C. Johnson), the subject for debate was: "That this House is in favour of equal pay for men and women." Mr. Herbert Shanly opened in the affirmative. Mr. C. F. S. Spurrell opened in the negative. The following members also spoke: Messrs. E. G. M. Fletcher, C. C. Ross, R. A. Clyde, H. F. C. Morgan, S. Lincoln, P. H. North-Lewis, H. J. Baxter and W. M. Pleadwell. The opener having replied, the motion was carried by six votes. There were eighteen members and one visitor present.

Rules and Orders.

THE COUNTY COURT (NO. 1) RULES, 1930.
DATED APRIL 2, 1930.

1. These Rules may be cited as the County Court (No. 1) Rules, 1930, and shall be read and construed with the County Court Rules, 1903,(1) as amended.

An Order and Rule referred to by number in these Rules means the Order and Rule so numbered in the County Court Rules, 1903, as amended.

A Form referred to by number in these Rules means the Form so numbered in Part I of the Appendix to the County Court Rules, 1903, as amended.

The County Court Rules, 1903, as amended, shall have effect as further amended by these Rules.

2. In Rule 26 of Order II, Rule 5 of Order V, paragraph (2) of Rule 26 of Order VII and Rule 12 of Order XLI the expression "Companies Act, 1929,"(2) shall be substituted for the expression "Companies (Consolidation) Act, 1908."(3)

3. Rules 10 and 11 of Order IX are hereby revoked.

4. In Rule 3 of Order X the expression "section two hundred and three of the Supreme Court of Judicature (Consolidation) Act, 1925,"(4) shall be substituted for the expression "section eighteen of the Supreme Court of Judicature Act, 1884."(5)

5. Rule 17 of Order XXV shall be numbered as paragraph (1) and at the end thereof there shall be added the following paragraph which shall stand as paragraph (2):—

"(2) Where the warrant is against the goods of a farmer, the Registrar shall also deliver to the bailiff with the warrant any official certificate of search which has been furnished under the provisions of Rule 7 (2) of this Order."

6. At the end of Rule 56 of Order XXV the following words shall be added:—

"but a memorandum of the amount of such costs shall be entered on any judgment summons or fresh order together with a statement that such costs are not to be included as aforesaid and are not payable out of moneys paid into Court otherwise than under an execution against the goods."

7. In paragraph (1) of Rule 74 of Order XXV the words "the provision substituted by section twenty-three of the County Courts Act, 1919,(6) for section one hundred and fifty-three of the County Courts Act, 1888,"(7) shall be substituted for the words "section one hundred and fifty-three of the Act."

8. In Rule 1 of Order XXVIII, paragraph (2) shall be re-numbered and shall stand as paragraph (3) and the following new paragraph shall be inserted after paragraph (1) and shall stand as paragraph (2):—

"(2) In the case of a warrant against the goods of a farmer, the High Bailiff of the Court from which the warrant issued shall send to the Registrar of the foreign Court with the warrant any official certificate of search which has been delivered to him under the provisions of Order XXV, Rule 17 (2)."

9. In Rule 1 of Order XXXII the expression "Supreme Court of Judicature (Consolidation) Act, 1925," shall be substituted for the expression "Supreme Court of Judicature Act, 1884."

10. Rule 9 of Order XXXIII shall be amended as follows:—

(*a*) the expression "two hundred and four of the Supreme Court of Judicature (Consolidation) Act, 1925" shall be

(1) S.R. & O. Rev. 1904, III County Court E., p. 89 (1903 No. 629).
(2) 19–20 G. 5. c. 23.
(3) 8 E. 7. c. 69.
(4) 15–6 G. 5. c. 49.
(5) 47–8 V. c. 61.
(6) 9–10 G. 5. c. 73.
(7) 51–2 V. c. 43.

substituted for the expression "seventeen of the Supreme Court of Judicature Act, 1884"; and

(*b*) after the words "order is made" there shall be inserted the words "in the Central Office of the High Court."

11. In paragraph (1) of Rule 13, of Order XXXIII after the words "one of the parties" there shall be inserted the words "and the order is made in the Central Office of the High Court."

12. In Rule 2 of Order XXXV the expression "Workmen's Compensation Rules, 1926,"(8) shall be substituted for the expression "Consolidated Workmen's Compensation Rules, 1913."(9)

13. In Rule 3 of Order XXXV the expression "Rules 90, 91 and 91A" shall be substituted for the expression "Rules 90 and 91."

14. Rule 5 of Order XXXVII is hereby revoked.

15. In paragraph (3) of Rule 11 of Order LB the words "the Act or" shall be omitted.

16. After Order LB there shall be inserted the following Rules which shall stand as Order LC:—

"ORDER LC.

Parochial Registers and Records Measure, 1929.(10)

1. Applications to the County Court under section 10 of the Parochial Registers and Records Measure, 1929, shall be made in accordance with the provisions of this Order.

2. Every such application shall be made by action commenced by plaint and summons in the ordinary way and the action shall be intituled "In the matter of the Parochial Registers and Records Measure, 1929, section 10.

3. The action shall be commenced in the Court in the district of which are situate the register books, deeds or documents in respect of which relief is claimed.

4. The bishop applying to the Court under section 10 of the above-mentioned Measure shall be the plaintiff.

The defendant shall be—

(*a*) if the application is made under subsection (1) of the said section, the person neglecting or refusing to comply with the order made by the bishop;

(*b*) if the application is made under subsection (2) of the said section, the person in whose possession the register books are."

17. In Rule 50 of Order LIII the figures "1925" shall be substituted for the figures "1906."

18. At the end of Order LV the following words shall be added:—

"The Interpretation Act, 1889,(11) shall apply for the purposes of these Rules in like manner as if they were an Act of Parliament."

19. In the penultimate paragraph of Form 18 and in the penultimate paragraph of the indorsement on Form 22 the words "fees amounting to eighteen shillings" shall be substituted for the words "eight shillings for the fees of such Jury."

20. Form 78 shall be amended as follows:—

(*a*) In the heading the expression "Supreme Court of Judicature (Consolidation) Act, 1925, Section 203" shall be substituted for the expression "Supreme Court of Judicature Act, 1884, section 18"; and

(*b*) In the first paragraph the expression "section 203 of the Supreme Court of Judicature (Consolidation) Act, 1925," shall be substituted for the expression "section 18 of the Supreme Court of Judicature Act, 1884."

21. Forms 157, 186 and 190 shall be amended as follows:—

(*a*) after the words "the first payment to be made on the day of , 19 ," in each of the forms there shall be inserted the following paragraph:—

"[In case default be made in payment of any instalment according to this order, execution or successive executions may issue for the whole of the said sum and costs then remaining unpaid, or for such portion thereof as the Court shall order]"

(*b*) at the end of each of the forms the following paragraph shall be added:—

"Unsatisfied costs of execution which are not to be included above and are not payable out of moneys paid into Court otherwise than under an execution against the goods. £ : :"

22. In Form 162 the words commencing "The fees for keeping possession" to the end of the Form shall be omitted and the following words shall be substituted therefor:—

"If you pay the amount to be levied, as stated above, within half an hour of the entry of the bailiff, you will not be required to pay to him any further sum.

"The Fees for keeping possession of such of your goods as may be seized (including expenses of removal, storage of goods, and all other expenses) is SIXPENCE IN THE POUND PER DAY NOT EXCEEDING SEVEN DAYS ON THE VALUE OF SUCH GOODS, the value to be fixed by appraisement in case of dispute, so that the total fee does not exceed 10s. per day, and, in addition, for feeding animals, the reasonable expenses of feeding them. If possession is kept after the seventh day at the written request of both parties, the same fees per day may be allowed for a reasonable further time in respect of such possession.

"If your goods are removed, you will have to pay the appraisement fee as undermentioned.

"Your goods are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at your request.

"If your goods are appraised and sold, the following fees are chargeable for the appraisement and sale, and no others:—

"For the appraisement SIXPENCE IN THE POUND on the value of the goods appraised, in addition to the stamp duty.

"For the sale, including advertisements, catalogues, sale, and commission, and delivery of the goods, ONE SHILLING AND SIXPENCE IN THE POUND ON THE AMOUNT REALISED BY THE SALE.

"For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act, 1883, in addition to the last mentioned fee, the reasonable expenses thereof.

"Where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, there may be allowed all charges actually and necessarily incurred with a view to a sale, not exceeding ONE SHILLING IN THE POUND on the value of the goods seized, the value to be fixed by appraisement in case of dispute, and, in addition, any reasonable expenses paid for advertising pursuant to section 145 of the Bankruptcy Act, 1883.

"If your goods are removed, the bailiff is required to give you a sufficient inventory of the goods so removed, and to give you notice of the time when and the place where such goods will be sold, at least twenty-four hours before the time fixed for the sale.

"If your goods are sold, the bailiff is required to furnish you, on your request, with a detailed account in writing of the sale, and of the application of the proceeds thereof."

23. The indorsement on Form 163 is hereby revoked and the following indorsement shall be substituted therefor:—

"[*To be indorsed on every warrant of execution.*]

"The name and address of the [ ] solicitor to the execution creditor is:—

"[*This information should be inserted only where the warrant is to be sent to the High Bailiff of a foreign Court.*]

"FEES FOR THE EXECUTION OF THIS WARRANT.

"If the debtor pays the amount to be levied, as stated on the other side, within half an hour of the entry of the bailiff, he will not be required to pay to him any further sum.

"The fees for keeping possession of the goods seized (including expenses of removal, storage of goods, and all other expenses) IS SIXPENCE IN THE POUND PER DAY NOT EXCEEDING SEVEN DAYS ON THE VALUE OF SUCH GOODS, the value to be fixed by appraisement in case of dispute, so that the total fee does not exceed 10s. per day, and, in addition, for feeding animals the reasonable expenses of feeding them. If possession is kept after the seventh day at the written request of both parties, the same fees per day may be allowed for a reasonable further time in respect of such possession.

"If the goods are removed, the debtor will have to pay the appraisement fee as undermentioned.

"If the goods are appraised and sold, the following fees are chargeable for the appraisement and sale, and no others:—

"For the appraisement, SIXPENCE IN THE POUND on the value of the goods appraised, in addition to the stamp duty.

"For the sale, including advertisements, catalogues, sale and commission, and delivery of the goods, ONE SHILLING AND SIXPENCE IN THE POUND ON THE AMOUNT REALISED BY THE SALE.

"For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act, 1883, in addition to the last-mentioned fee, the reasonable expenses thereof.

"Where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, there may be allowed the expenses reasonably incurred with a view to a sale, not exceeding ONE SHILLING IN THE POUND on the value of the goods seized, the value to be fixed by appraisement in case of dispute, and in addition any reasonable expenses paid for advertising pursuant to section 145 of the Bankruptcy Act, 1883.

(8) S. R. & O. 1926 (No. 448) p. 289.
(9) S. R. & O. 1913 (No. 661) p. 401.
(10) 19-20 G. 5. No. 1.
(11) 52-3 V. c. 63.

"If the goods are removed, the bailiff is required to give the debtor a sufficient inventory of the goods so removed, and to give him notice of the time when and the place where such goods will be sold, at least twenty-four hours before the time fixed for the sale.

"If the goods are sold, the bailiff is required to furnish the debtor, on request, with a detailed account in writing of the sale, and of the application of the proceeds thereof."

24. In Forms 162, 163, 164 and 165, after the words "Poundage for issuing this warrant" there shall be inserted the following words:—

"[Where the warrant is against a farmer insert as an additional item 'Paid for certificate of search in the Land Registry 1s. 6d.']"

25. In Form 173 the following words shall be omitted:—

"NOTE.—This Warrant must be signed by the High Bailiff and sealed in accordance with section 158 of the Act."

26. In Form 176 after the words "Sum in payment of which defendant has made default" there shall be inserted the following words:—

"Unsatisfied costs of execution which are not to be included above and are not payable out of moneys paid into Court otherwise than under an execution against the goods £ : : "

27. At the end of Form 178 the following words shall be added:—

"Unsatisfied costs of execution which are not to be included above and are not payable out of moneys paid into Court otherwise than under an execution against the goods £ : : "

28. In Form 285 the words "and to Messrs. the London Agents of the Sheriff of " shall be enclosed in square brackets.

29. In Forms 307, 309, 311 and 312 the expression "£100" shall be substituted for the expression "£50."

30. Forms 324, 325, 326, 327, 328, 329 and 330 are hereby revoked.

31. In Part III of the Appendix to the County Court Rules, 1903, the following words shall be substituted for the existing words which relate to the Companies Act, 1908:—

"Companies Act, 1929.

"92.—(1) A company shall, as from the day on which it begins to carry on business or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.

"(2) Notice of the situation of the registered office, and of any change therein, shall be given within twenty-eight days after the date of the incorporation of the company or of the change, as the case may be, to the registrar of companies, who shall record the same.

"The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this sub-section.

"(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

"370.—(1) A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

"(2) Where a company registered in Scotland carries on business in England, the process of any Court in England may be served on the company by leaving it at or sending it by post to the principal place of business of the company in England, addressed to the manager or other head officer in England of the company.

"(3) Where process is served on a company under sub-section (2) of this section, the person issuing out the process shall send a copy thereof by post to the registered office of the company."

We, the undersigned persons appointed by the Lord Chancellor pursuant to section one hundred and sixty-four of the County Courts Act, 1888, and section twenty-four of the County Courts Act, 1919, to frame Rules and Orders for regulating the practice of the Court and forms of proceedings therein, having by virtue of the powers vested in us in this behalf framed the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

W. M. Cann. *Ivor Bowen.*
S. A. Hill Kelly. *H. Bensley Wells.*
T. Mordaunt Snagge. *A. O. Jennings.*
Barnard Lailey. *A. H. Coley.*

Approved by the Rules Committee of the Supreme Court.
Claud Schuster,
Secretary.

I allow these Rules, which shall come into force on the 1st day of July, 1930.

Dated the 2nd day of April, 1930. *Sankey, C.*

In Parliament.

House of Commons.

Questions to Ministers.

SOLICITORS (FRAUD).

In reply to Sir JOHN FERGUSON, the SOLICITOR-GENERAL (Sir James Melville) said: My hon. and learned Friend is informed by The Law Society that there have been eleven convictions of solicitors under the criminal law for fraudulent conversion of clients' property during the period 1st May, 1929, to 14th April, 1930.

Sir J. FERGUSON: Is the hon. and learned Gentleman aware that there is a very general feeling among the public that The Law Society ought to put its house in order in this respect?

Mr. MARJORIBANKS (for Captain Cazalet) asked the Attorney-General whether he will introduce legislation, by way of insurance or otherwise, by which solicitors convicted of fraud may be enabled to refund, in whole or in part, the losses of those who have suffered by their fraud?

The SOLICITOR-GENERAL: I am fully aware of the importance of the matter to which the hon. and gallant Member has drawn attention. I understand that it has for some time been under the consideration of The Law Society, with whom my friend the Lord Chancellor is in communication. The time is not yet ripe for the introduction of legislation upon the subject.

Mr. MARJORIBANKS: Will the hon. and learned Gentleman communicate with The Law Society?

The SOLICITOR-GENERAL: Yes, certainly, and, if I do not do it, I will ask my Noble Friend the Lord Chancellor to resume negotiations with them if he is not still in communication with them.

Mr. C. WILLIAMS: When will the time be really thoroughly ripe?

Mr. MUDDERIDGE: Does not my hon. and learned Friend think it advisable to let the public know that it is better to leave funds to the Public Trustee than to leave them in the hands of private practitioners? [16th April.

Legal Notes and News.

Honours and Appointments.

Mr. FRED E. RINGLAND, solicitor, Bangor, has been appointed solicitor to the Northern Bank of Ireland.

Mr. J. W. F. BEAUMONT, K.C. (a son of the late Mr. Edward Beaumont, whose death is announced on p. 280), has been appointed Chief Justice of the High Court of Judicature, Bombay, to take effect upon the retirement in June next of Sir Amberson Marten. Mr. Beaumont was called by Lincoln's-Inn in 1901, and took silk quite recently.

Mr. GEORGE CECIL WHITELEY, K.C., has been appointed Recorder of Southend on-Sea, to fill the vacancy caused by the appointment of Mr. E. H. Tindal Atkinson as Director of Public Prosecutions. Mr. Whiteley was called by the Middle Temple in 1900, and took silk in 1921.

Mr. G. W. HOLFORD KNIGHT, K.C., has been appointed Recorder of West Ham to succeed Mr. Whiteley. He was called by the Middle Temple in 1903, and took silk this year.

Mr. G. H. GUILLUM SCOTT, barrister-at-law, has been appointed Chancellor of the Diocese of Peterborough. Mr. Scott has been for a number of years Secretary of the Church Assembly, and was called by the Inner Temple in 1899.

Professional Partnerships Dissolved.

NOTICE IS HEREBY GIVEN that the partnership heretofore subsisting between JOHN HOWARD SMITH and ALFRED SKELT, practising as solicitors, at 16, City-road, London, E.C.1, under the style or firm of J. Howard Smith & Skelt, has been dissolved as from the 31st day of December, 1929, the said John Howard Smith having retired from the said firm.

Dated the 31st day of December, 1929.

(Signed) J. HOWARD SMITH.

CHARLES GRABURN COE and ERNEST KEENE ROBINSON, solicitors, 14, Hart-street, Bloomsbury, W.C.1 (Coe and Robinson), dissolved as from 31st March, 1930. The business will be carried on in the future by E. K. Robinson under the same style.

PROCEDURE IN LAW COURTS.

At the annual dinner of the Institute of Shorthand Writers practising in the Law Courts, on Monday, in reply to the toast of "the Visitors," Sir Henry Maddocks, Recorder of Birmingham, said it was stated in *The Times* a few days ago that a petition was to be presented to the Lord Chancellor for an inquiry as to the procedure in our courts, for the purpose of amending it and bringing it up to date. He thought it high time that such an inquiry was instituted, as while we were growing older we were still making use of the machinery of 1875. Instead of our courts, with their wonderful judges and world-wide reputation for impartiality, being made use of, by reason of their procedure and the expense attending that procedure, and the delay of actions, we were driving litigation into other channels—to arbitration, etc. No one wished for an increase of litigation. It was merely that they desired to see that litigation was conducted in such a manner that litigants could secure justice administered within a reasonable time and at reasonable expense. Counsel who pleaded in courts might be in receipt of double the incomes of judges who listened to them, and there was not the same incentive as in days gone by to be a judge.

LUNDY ISLAND A PART OF ENGLAND.

Lundy Island's historic past, with its episodes of pirates and smugglers, was, says *The Morning Post*, referred to at Bideford County Police Court recently in support of the Public Prosecutors' claim that the Bench possessed jurisdiction over the island. The owner, Mr. Martin Coles Harman, a London financier, was charged with issuing a piece of metal value one halfpenny contrary to the Coinage Act.

Mr. H. R. Bazeley (for Mr. Harman) submitted that the island was for all purposes outside the realm. No rates or taxes were paid and levies were made by the owner. There was no register of births, deaths, or marriages, and in cases of sudden death there was no inquests.

Mr. G. R. Paling (for the Director of Public Prosecutions) submitted that the island formed part of the United Kingdom. The King's writ was issued for the recovery of the island in 1587.

Mr. Bazeley replied that Lundy was a vest-pocket self-governing dominion, and the owner exercised such rights as he thought fit.

The Bench were convinced that they had jurisdiction, and Mr. Harman, who refused to plead, was fined £5, with £15 15s. costs.

ACTION ABANDONED BY THE DUKE OF LEINSTER.

At a vacation sitting of the Court of Session at Edinburgh on Tuesday Lord Anderson allowed the abandonment of an action raised by the Duke of Leinster against May Etheridge or Fitzgerald, Duchess of Leinster, and a co-respondent.

The action was brought in 1926, and an appearance was entered on the part of the respondent, but nothing further was done in the way of procedure.

At the Vacation Court held on 9th April last, counsel stated that when that action had been cleared out of the way another action would be raised by the Duke.

SCOTTISH MARRIAGE CUSTOM.

In giving evidence on Scottish marriage custom at the Liverpool Assizes on Monday, Mr. W. F. Trotter, K.C., of the Scottish Bar, a member of the English Bar, and Professor of Law in the University of Sheffield, said that, according to Scottish marriage custom consent might be either oral or in writing without witnesses, and no date need be proved, providing both parties were serious in their intention.

Mr. JOHN GRIFFIN BRISTOW, solicitor, of 169, Queen's Gate, South Kensington, and 1, Copthall-buildings, E.C., solicitor, left estate of the value of £52,561. He gave £50 to Sergt. E. Faulkner, if, at the time of his death, head porter at 169, Queen's-gate.

Auction News.

The attention of solicitors and others is called to the sale at the Mart on Wednesday next, the 7th inst., by Messrs. Arnold Phillips & Co., announced on p. xvi, of valuable freehold and leasehold properties in the City of London and also at East Ham, Southall and Islington, all of which appear to offer very desirable investments.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (1st May, 1930) 3%. Next London Stock Exchange Settlement Thursday, 8th May, 1930.

	Middle Price 29th Apl. 1930.	Flat Interest Yield.	Approximate Yield with redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	87½	4 11 5	—
Consols 2½%	54¼	4 12 2	—
War Loan 5% 1929-47	101¼xd	4 18 9	—
War Loan 4½% 1925-45	97	4 12 9	4 15 3
War Loan 4% (Tax free) 1929-42	101	3 19 3	3 18 6
Funding 4% Loan 1960-90	89½	4 9 5	4 10 0
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	93½	4 5 7	4 7 6
Conversion 5% Loan 1944-64	102⅝	4 17 6	4 17 0
Conversion 4½% Loan 1940-44	98	4 11 10	4 12 3
Conversion 3½% Loan 1961	76⅜	4 11 2	—
Local Loans 3% Stock 1912 or after	63½	4 14 4	—
Bank Stock	252½	4 15 1	—
India 4½% 1950-55	85	5 5 11	5 12 6
India 3½%	63½	5 10 3	—
India 3%	54	5 11 1	—
Sudan 4½% 1939-73	96	4 13 9	4 14 6
Sudan 4% 1974	85	4 14 2	4 16 9
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 15 years.)	83½	3 11 10	4 2 3
Colonial Securities.			
Canada 3% 1938	90	3 6 8	4 10 0
Cape of Good Hope 4% 1916-36	94	4 5 1	5 2 0
Cape of Good Hope 3½% 1929-49	83	4 4 4	4 17 6
Ceylon 5% 1960-70 (First Dividend £2 5s., 1st August, 1930.)	103½	4 16 10	4 16 6
Commonwealth of Australia 5% 1945-75	92	5 8 8	5 9 9
Gold Coast 4½% 1956	94	4 15 9	4 18 0
Jamaica 4½% 1941-71	93	4 16 9	4 18 3
Natal 4% 1937	94	4 5 1	5 2 0
New South Wales 4½% 1935-45	81½	5 6 6	6 2 6
New South Wales 5% 1945-65	92½	5 8 1	5 9 0
New Zealand 4½% 1945	95	4 14 9	4 19 0
New Zealand 5% 1946	101	4 19 0	4 18 0
Nigeria 5% 1950-60 (First Dividend £1 15s., 1st August, 1930.)	101⅞	4 19 0	4 18 6
Queensland 5% 1940-60	89½	5 11 9	5 15 0
South Africa 5% 1945-75	101	4 19 0	4 18 0
South Australia 5% 1945-75	90½	5 10 6	5 11 3
Tasmania 5% 1945-75	92½	5 8 1	5 9 0
Victoria 5% 1945-75	90½	5 10 6	5 11 3
West Australia 5% 1945-75	90½	5 10 6	5 11 3
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	64	4 13 9	—
Birmingham 5% 1946-56 (First Dividend £1 5s., 1st July, 1930.)	101	4 19 0	4 19 3
Cardiff 5% 1945-65	100	5 0 0	5 0 0
Croydon 3% 1940-60	71	4 4 6	4 16 9
Hastings 5% 1947-67 (First full half year's Dividend, 1st October, 1930.)	102½	4 18 0	4 16 0
Hull 3½% 1925-55	79	4 8 7	4 19 0
Liverpool 3½% Redeemable by agreement with holders or by purchase	75	4 13 4	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	54	4 12 7	—
London City 3% Consolidated Stock after 1920 at option of Corporation	65	4 12 7	—
Manchester 3% on or after 1941	65	4 12 7	—
Metropolitan Water Board 3% "A" 1963-2003	65	4 12 7	—
Metropolitan Water Board 3% "B" 1934-2003	66	4 10 11	—
Middlesex C.C. 3½% 1927-47	85	4 2 4	4 18 0
Newcastle 3½% Irredeemable	73	4 15 11	—
Nottingham 3% Irredeemable	62	4 16 9	—
Stockton 5% 1946-66	100	5 0 0	5 0 0
Wolverhampton 5% 1946-56	101	4 19 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	83	4 16 5	—
Gt. Western Rly. 5% Rent Charge	100	5 0 0	—
Gt. Western Rly. 5% Preference	96½	5 3 8	—
L. & N.E. Rly. 4% Debenture	78½	5 1 11	—
L. & N.E. Rly. 4% 1st Guaranteed	74½	5 7 5	—
L. & N.E. Rly. 4% 1st Preference	68	5 17 8	—
L. Mid. & Scot. Rly. 4% Debenture	80½	4 19 5	—
L. Mid. & Scot. Rly. 4% Guaranteed	78	5 2 7	—
L. Mid. & Scot. Rly. 4% Preference	71½	5 11 11	—
Southern Railway 4% Debenture	80½	4 19 5	—
Southern Railway 5% Guaranteed	98½	5 1 6	—
Southern Railway 5% Preference	93	5 7 6	—

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Approximate Yield with Redemption.	£	s.	d.
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	3	18	6
	4	10	0
	4	7	6
	4	17	0
	4	12	3
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	5	12	6
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	4	14	6
	4	16	9
	4	2	3
	4	10	0
	5	2	0
	5	17	6
	5	16	6
	9	9	9
	18	0	
	18	3	
	2	0	
	2	6	
	9	0	
	19	0	
	18	0	
	18	6	
	15	0	
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